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1 ARBITRATOR HABERFELD: And therefore
2 what?

3 MR. WHITE: The only -- so the probative
4 value of the printouts is perhaps redundant. It's
5 just showing documents reflecting what
6 Mr. Randazza testified.

7 ARBITRATOR HABERFELD: So it would be
8 corroborative --

9 MR. WHITE: Yes.

10 ARBITRATOR HABERFELD: -- of his
11 testimony?

12 I'm going to reserve that in the event
13 that it's challenged, I will give you another shot
14 at corroborating.

15 MR. WHITE: Yes, Your Honor.

16 ARBITRATOR HABERFELD: But right now, no.
17 BY MR. WHITE:

18 Q. Let's talk about some of the other claims
19 regarding your other matters, Mr. Randazza. You
20 testified before about how common it was in the
21 industry for the people representing pirates to
22 make these offers to try to conflict you out or to
23 offer what you might colloquially call bribes.

24 Do you remember that?

25 A. Yes.

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1 Q. So did that happen with TNAFlix as one of
2 the -- one of the matters they cited?

3 A. Yes, it did.

4 Q. Now, in that case, was there an issue of
5 some purported buyer that might be interested in
6 buying?

7 A. There was.

8 Q. And did you bring that up to the counsel
9 for TNAFlix?

10 A. I did.

11 Q. What was the purpose in negotiation of
12 raising this issue of potential buyer?

13 A. Probing information about them, try to
14 get them to get excited about getting a buyer, up
15 the amount of the settlement agreement.

16 Q. Was there any buyer that you knew of?

17 A. Nobody that I had in mind.

18 Q. Was it hypothetically possible there
19 could be a buyer someplace?

20 A. Of course, it's hypothetically possible.
21 But not like I had a buyer who said, I want to buy
22 a Website that you just sued.

23 Q. So the respondents have submitted
24 exhibits showing a discussion back and forth
25 between you and TNAFlix counsel --

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1 A. Yes.

2 Q. -- about possibly brokering the sale and
3 who would get the percentage of what?

4 A. Uh-huh, yes.

5 Q. Did you understand during any of this
6 that that was actually ever going to amount to
7 anything?

8 A. This, like anything with Val Gurvits,
9 it's always very suspect. So, no, I did not
10 expect it would ever amount to anything except
11 perhaps Val telling TNAFlix to up the amount of
12 settlement.

13 Q. Now, we talked about Megaupload and the
14 discussion in that case, as well?

15 A. Yes.

16 Q. Did you expect the negotiations there
17 with the opposing counsel to result in anything
18 actually going to you as opposed to Liberty?

19 A. No, I did not.

20 Q. You occasionally go as far as to
21 produce -- create documents kind of playing along
22 with the other side?

23 A. Yes.

24 Q. What was your ultimate purpose in doing
25 that?

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1 A. To get the most I could in the settlement
2 that I was working on at the time.

3 Q. Let's talk about Xvideos.

4 A. Yes.

5 Q. What was Xvideos?

6 A. A tube site.

7 Q. Like the tube site you testified about
8 this morning?

9 A. Yes. Not just was, but is.

10 Q. Did you ever make a proposal to
11 Mr. Gibson about a joint effort against Xvideos, a
12 joint suit against Xvideos?

13 A. There was some discussion of that.

14 Q. Would you look at Exhibit 28, please?

15 A. All right. I'm there.

16 Q. Please let me know when you've reviewed
17 it and you recognize what it is?

18 A. I have reviewed it.

19 Q. Is this an e-mail from you to Mr. Gibson
20 about a proposed lawsuit against Xvideos?

21 A. It is.

22 Q. And why at this time, January 2010, was a
23 lawsuit against Xvideos feasible?

24 A. Well, Gill was going to do most of the
25 work, and so I -- I was relying in large part on

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1 his representations that it was a good suit.

2 Q. What would the cost be under this
3 proposal to Liberty?

4 A. \$5,000.

5 Q. What did you anticipate was the likely
6 outcome?

7 A. Well, at that point we thought we would
8 at least get the \$5,000 back, but probably get
9 more back. And, you know, a lot of it, I was
10 listening to Gill at the time as to it being a
11 good target.

12 Q. Now, did you subsequently learn more
13 about XVideos?

14 A. I did.

15 Q. Did they ever approach you to see if you
16 would represent them?

17 A. Actually, I got approached by their
18 French counsel.

19 Q. And on what subject?

20 A. There was no interest in this case here,
21 so I kind of put this aside, and we weren't going
22 forward with it. But he asked me if I would -- if
23 I knew Gill, and that if I could speak to Gill on
24 behalf of him and his client, because Gill was
25 making some threats to them.

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1 I knew this French lawyer for a number of
2 years, actually. His name escapes me. I can look
3 it up tonight. But he -- he and I used to have
4 drinks at meetings from time to time that he would
5 always show up at.

6 Q. Did you eventually represent Xvideos in
7 that matter that was brought to you?

8 A. Yes.

9 Q. And who -- well, what did you do for them
10 in that matter?

11 A. The primary responsibility for it was
12 handled by Jessica Christensen. But she
13 negotiated with Gill to resolve the dispute
14 between his clients and Xvideos.

15 Q. And in the course of settling that, was
16 anything done to the way that Xvideos did
17 business?

18 A. Yes.

19 Q. What was that?

20 A. Xvideos -- you know, at the time -- let
21 me give you a little background so the answer
22 makes sense.

23 But at the time there was this program
24 that has since completely flopped. But at the
25 time, there was a program called Vobile. And what

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1 Vobile was purporting to do, was it was going to
2 create a video fingerprinting database. And every
3 adult entertainment company that would join it was
4 supposed to upload all of its movies to this
5 database, which would then reduce their movies
6 into a digital fingerprint, kind of like the
7 hashtag we talked about earlier with torrenting.

8 So every video can be reduced to this
9 harsh value. It's a numerical value that a
10 computer will recognize. So what the theory was
11 is that Vobile would go out and sign up studios
12 that produced movies and tube sites that had
13 uploaders uploading the movies, and in order to
14 upload a movie, it would have to go through this
15 fingerprinting database.

16 Now, upon doing that, if it tripped a
17 wire that this is one of our protected videos, it
18 would then go on to whatever your -- what they
19 referred to them as Vobile rules, and your Vobile
20 rules could be really whatever you wanted them to
21 be. Let's say somebody uploaded your entire
22 one-hour movie, well, Vobile could then either
23 trim it to three minutes if you wanted it to just
24 be a trailer, or Vobile could turn it into a
25 completely different movie, like you could make a

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1 PSA saying, Why are you trying to steal our
2 movies? Or you could even just have it reject it.
3 So the person would spend all this time
4 uploading the movie, and then it would get there,
5 and it would say, This movie is no longer
6 available. Seemed like a great idea. In fact,
7 one of the options for it was also that it would
8 turn the movie into a sponsored link, that then
9 the studio would make money from. So,
10 essentially, you are harnessing the pirates out
11 there, who are all the people uploading the stuff
12 to your Website, as your own sales force.

13 Q. Did you think at the time that this was
14 something that if widely adopted would benefit
15 Liberty?

16 A. Yeah. I mean, it would have -- had it
17 worked, it would have eliminated all of the piracy
18 by users of tube sites, or it would have simply
19 turned them into a force for making money for
20 Liberty and other similarly situated studios.

21 But in order to do that, both parties had
22 to join the Vobile program and then agree that
23 they would -- the movie studios had to upload
24 their content to the fingerprinting database, and
25 the tube site had to somehow be encouraged to join

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1 Vobile, and their motivations were somewhat
2 limited.

3 Q. So how would you convince Xvideos in this
4 situation to join it?

5 A. Well, at this point, Gill was suing them,
6 and one option was, Why don't we get them to
7 become the inaugural tube site using Vobile, and
8 then I can get Corbin Fisher in as one of the
9 inaugural studios to use Vobile, and then we are
10 the first ones to do this, maybe we get advanced
11 position in the market on it. It seemed like a
12 really good idea.

13 Q. Did Corbin Fisher ever adopt Vobile?

14 A. Sort of. They -- they agreed to join the
15 program, and then they had -- there was somebody
16 there who was supposed to be uploading the videos
17 to the fingerprint database, but it was always
18 behind, and never really got done, so we only had
19 a few videos in it. I couldn't tell you what
20 percentage, but I'm sure it was less than half,
21 and that's less than half at the time we started.
22 I don't think anything going forward was ever
23 uploaded.

24 Q. Did Mr. Gibson ever make any decision
25 about continued participation in Vobile?

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1 A. You know, we often went back and forth on
2 it. He -- usually the explanation to me was we
3 don't have the resources or the manpower to upload
4 these videos to Vobile.

5 Q. Now, after you started representing
6 Xvideos on that --

7 A. Yes.

8 Q. -- was there ever a situation when some
9 of Corbin Fisher's property might have been
10 uploaded onto that tube site?

11 A. Oh, yeah.

12 Q. And at that stage, so we're talking now
13 in 2011?

14 A. Yes.

15 Q. What was the appealability of Xvideos as
16 a target itself of a lawsuit?

17 A. It was not a good one. They didn't have
18 a membership area, so there was no -- they weren't
19 selling memberships, like the GLBT sites, the ones
20 that we got the default judgment against because
21 they were committing discovery violations.

22 So tracing their money was extremely
23 difficult. Even having worked for them, I didn't
24 know where the heck their money was. Also, they
25 were based offshore, and they had a pretty robust

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1 policy. In fact, they didn't like the idea of
2 Vobile because they, themselves, had a better
3 fingerprinting system.

4 So with their fingerprinting system and
5 Vobile's fingerprinting system, I'm going to have
6 to show secondary liability. I'm going to have to
7 show that this Website was a willing and active
8 participant in the piracy and not just providing
9 the Website, kind of like YouTube.

10 YouTube isn't going out there and doing
11 this. So I'm going to have to show that they were
12 actively courting piracy, when meanwhile they had
13 adopted a system that was better than the industry
14 standard that we were trying to do, and then they
15 adopted the industry standard.

16 It was a -- you know, it was -- it was a
17 pretty bad mission, plus they had already settled
18 with Gill. And at that point, like I said before,
19 you don't want to be the second one going after
20 one of these sites because then they just realized
21 that they are just going to get the death of a
22 thousand cuts.

23 Q. Was the Free Speech Coalition involved in
24 pushing Vobile?

25 A. Yes, yes. The Free Speech Coalition is

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1 the industry trade organization for the adult
2 entertainment industry. So they saw Vobile, as
3 well, as a way that we could possibly do something
4 about movies being uploaded to tube sites.

5 Q. Would you please take a look at
6 Exhibit 43?

7 A. Okay. I'm there.

8 Q. Do you recognize what this is?

9 A. Yes. It's an e-mail exchange between
10 Andrew Rasmus and I.

11 Q. So at the bottom, this looks like he's
12 sending links to you at Xvideos; is that right,
13 and asking, Can we go after them?

14 A. Yes.

15 Q. And can you explain your response?

16 A. Yes. I was explaining the Vobile system
17 to him. I was explaining that Jessica and I had
18 personally had them sign up for Vobile.

19 Q. What did you mean by, Thus, making an
20 ethical problem if we sue this particular Website?

21 A. Well, that we had represented them, so
22 that seems to be a problem, as well.

23 Q. There was reference in --

24 A. But also I felt like -- I felt like we
25 had a problem if we were part of jamming Vobile

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1 down their throat, how are we going to wind up
2 suing them? I mean, it would have looked very bad
3 for us. Not only that, I was afraid that we would
4 have prevailing party attorney's fees turn back on
5 us.

6 Q. And you said something before that, you
7 say, I personally shoved Vobile down their throat
8 for the Free Speech Coalition.

9 A. Yes.

10 Q. What did that mean? Did you mean to
11 convey that you were representing the Free Speech
12 Coalition?

13 A. No, because I never represented FSC. I
14 guess FSC -- it was an FSC project, and they were
15 aware of that, because we were a member of FSC.

16 Q. So when you are saying you are shoving it
17 down their throat, are you talking about
18 convincing them as your client?

19 A. Yes. I should have made that a little
20 more clear there.

21 Q. Now, do you know -- well, first of all,
22 let me go forward. Mr. Rasmus is saying there is
23 no DMCA agent in this e-mail.

24 A. Yes.

25 Q. Do you see that?

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1 A. Yes.

2 Q. What's the significance of that in terms
3 of whether or not the tube site is a good target
4 for Liberty?

5 A. Well, one, I don't think he was correct
6 on that, because I am reasonably certain that they
7 had a DMCA agent, and I'm certain they had one by
8 then.

9 Also, if you have a DMCA agent, that's
10 where you send takedown notices to. So if you
11 have the -- what is it, you sign up, you put a
12 DMCA agent on this public database, and that's
13 where you can send your takedown requests. It
14 would be an absolute defense to liability if you
15 have a DMCA agent, somebody sends you a takedown
16 request to that DMCA agent, and then you take it
17 down.

18 So if you don't have one, it doesn't mean
19 you are liable, but it makes it -- it gets rid of
20 that absolutely defense.

21 Q. Was it still possible if you could
22 identify uploaders to tube sites to sue them?

23 A. Of course.

24 Q. And did Liberty ever do that?

25 A. We never sued, to the best of my

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1 recollection, an uploader to a tube site. I mean,
2 it was so long ago. There are so many cases. We
3 may have, but I have no recollection of suing an
4 individual uploader.

5 Wait, wait, wait. No, I do have a
6 recollection. We did sue some uploaders. We sued
7 them by their fictitious names, by their screen
8 names on the tube sites, and sought early
9 discovery on them. I'm pretty sure we did it in a
10 case called Sun Porno, which was going on at the
11 time of my termination. I'm not sure to what
12 extent the company continued to pursue those
13 uploaders at that time.

14 Q. Let me ask you, did you -- do you
15 remember whether or not you informed Mr. Gibson or
16 Excelsior that you were representing Xvideos in
17 that particular matter?

18 A. I don't recall making that clear or
19 unclear disclosure.

20 Q. Did you get a written conflict waiver
21 from them?

22 A. No.

23 Q. Would you please take a look at
24 Exhibit 55? That would be in the second volume.

25 A. Okay. Got it.

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1 ARBITRATOR HABERFELD: One moment,
2 please.

3 Go ahead.

4 BY MR. WHITE:

5 Q. Do you remember what this e-mail is
6 about?

7 A. Yes.

8 Q. So it starts with an e-mail about some
9 sort of clip at Xvideos that might be infringing,
10 correct?

11 A. Yes.

12 Q. What's the reason for your response?

13 A. Around this time, or maybe before, I had
14 a meeting with everybody at the company who worked
15 on DMCA takedown issues. And it was always a
16 concern of mine if we were seen as going after
17 fair use, because there was -- at this time, you
18 know, this -- this law has receded a little since
19 then. But there was a case calls Lenz versus
20 Universal, that's L-e-n-z. In that case,
21 Mrs. Lenz filed a lawsuit under 17 USC Section
22 512(f) of the DMCA.

23 And this is -- you know, the DMCA can
24 actually sting you backwards as a copyright owner.
25 If you file a bogus or unsupportable DMCA takedown

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1 notice, you are liable under 17 USC Section 512
2 (f).

3 Lenz versus Universal was one where
4 Universal Music got sued because they -- it was
5 very clearly fair use, and on a motion to dismiss,
6 it seemed that the law was -- the law had
7 developed that if -- you just had to not consider
8 fair use or it had to be obvious fair use.

9 So what I directed at the company was
10 that before anybody did a takedown -- in fact, I
11 think we changed the online form that we used to
12 report piracy links to have a checkbox that says,
13 I have considered fair use. And what I directed
14 was I've considered fair use, and it's not fair
15 use. I've considered fair use, and it is fair
16 use, in which case it is nothing. Or I'm not
17 sure, and I'm referring it to the attorney.

18 Q. So was this an example of a particular
19 video that you thought might have a fair use
20 argument?

21 A. Yeah. I wanted to -- I wanted to help
22 the people on this distribution list understand
23 what fair use looked like. So here, while this
24 video was up on Xvideos, mind you that it's not
25 them who uploaded it, it's a third party. So the

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1 question is: Do we have a claim at this point
2 against that user who uploaded that video?

3 And it was my assessment that that is
4 very clearly fair use, because the person who
5 reported it to us hadn't considered that. And
6 what it is, it's got two clips of the films ending
7 around 18 minutes and 30 seconds. I don't know
8 how long this video was in the first place, but
9 it's essentially got -- if I remember this, and
10 I'm, you know, recalling looking at the e-mail
11 here to refresh my memory, but it was a very long
12 video with like three second shots from a whole
13 bunch of porn videos.

14 So they were all the -- well, you can see
15 the descriptive title there. It doesn't take a
16 lot of imagination to see what it was. But that
17 would usually represent about two to four seconds
18 of a video.

19 So if you use two to four seconds of a
20 20-minute movie, you are going to have a very hard
21 time saying that that's copyright infringement.
22 So if we filed a DMCA notice on this, that party
23 who uploaded that would have had a 512(f) claim
24 against the company, and win or lose, what we're
25 going to look like is anti-expression bullies, and

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1 we're going to look bad, and we're potentially
2 going to have to pay attorney's fees to that party
3 and damages.

4 Q. Has the scope of the law changed any
5 since that time, 2011?

6 A. It's become a little harder to prove a
7 512(f) claim, but I think even now this claim, I
8 would say don't do this, when -- as I said here,
9 when the report does state that it's a
10 compilation, we should err on the side of not
11 taking it down.

12 Q. Another claim that's been made is about
13 your spending time working on your individual
14 clients as opposed to Excelsior work.

15 A. Uh-huh.

16 Q. Did you get -- do you recall the -- you
17 looked at first your contract with Excelsior that
18 had the disciplinary steps?

19 A. Yes.

20 Q. Did you get any written statements of
21 discipline saying that you were not getting
22 something done that needed to be done?

23 A. Neither record or recollection of that.

24 Q. Do you recall any verbal counseling that
25 you were not getting things -- completing tasks

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1 because you were spending too much time on private
2 clients?

3 A. None.

4 Q. Do you have a sense of how much time you
5 spent on Excelsior year-to-year in terms of -- in
6 compared to, say, a 40-hour workweek?

7 A. Well, are we saying Excelsior or are we
8 saying Corbin Fisher?

9 Q. Let's say all the Corbin Fisher
10 companies.

11 A. You know, on average, 40-plus hours per
12 week.

13 Q. All right. Was there ever a time when
14 maybe for a month or two that would drop if you
15 had something busy going on in a private case?

16 A. No. I can -- you know, maybe at worst on
17 a -- there might have been a day when I had a lot
18 going on in a private case, and I would wind up
19 either staying late that night or making it up on
20 the weekend.

21 Q. Would you ever -- would you notify the
22 company when you were using your paid time off
23 days?

24 A. Yeah, but I wouldn't -- I don't think I
25 ever said in particular I'm taking PTO today to do

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1 something for an outside client. I would just
2 take PTO.

3 Q. Would you take a look at Exhibit 56,
4 please?

5 A. Yes. I see that.

6 Q. Do you have it before you?

7 A. I do.

8 Q. Do you recognize that e-mail exchange?

9 A. I do.

10 Q. Jason asks, Are you on campus today? You
11 say, No. Took PTO.

12 A. Yes.

13 Q. Is this what you would do if you used one
14 of your days in order to work on an individual
15 matter?

16 A. Yes.

17 Q. And did you ever get any sort of
18 complaints or counselings when you were there
19 directed to you from the hierarchy?

20 A. That's an awful question. Any complaints
21 at all?

22 Q. Okay.

23 ARBITRATOR HABERFELD: That's why we take
24 more frequent breaks in the afternoon.

25 MR. WHITE: Yes.

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1 BY MR. WHITE:

2 Q. You said that you didn't -- never got
3 counseled through the counseling process on the
4 issue of not getting things done?

5 A. Yes.

6 Q. Did you ever get counseled on any other
7 issues, for instance, related to publicity?

8 A. Yes.

9 Q. What was that issue?

10 A. One time Mr. Dunlap spoke to me about
11 some concerns that -- when I went to -- when I
12 did, you know, media events and things like that,
13 that I would simply use my name and not tout the
14 company.

15 Q. Did you do anything corrective?

16 A. I did. You know, I think right about
17 that time, I did a spot for CNBC on online piracy.
18 And when they called me up to fact check and quote
19 check all of the stuff in the piece, I insisted to
20 them that they change my designation of Marc
21 Randazza, adult entertainment attorney or First
22 Amendment attorney, to Corbin Fisher general
23 counsel.

24 Q. Did any counseling like that from
25 Mr. Dunlap or Mr. Gibson come to you saying --

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1 identifying any particular tasks you hadn't
2 completed?

3 A. No, that never happened.

4 Q. Let me ask you as we approach the
5 4:00 o'clock hour -- let me ask you about the
6 client Bang Brothers.

7 A. Yes.

8 Q. What is Bang Brothers?

9 A. They are a porn company located in
10 Florida.

11 Q. How would you compare their product to
12 what Corbin Fisher produced?

13 A. Very different. Bang Brothers is sort
14 of -- well, it attracts a different genre of
15 sexual orientation, to start off. And so Bang
16 Brothers is primarily straight porn. Corbin
17 Fisher is sightedly not.

18 Q. And has Bang Brothers traditionally been
19 sort of aimed at a different taste or market of
20 sensibility?

21 A. Yeah, it's more of a -- you know, it
22 tends to be more -- you know, almost -- some of it
23 is almost comedy porn, if you can wrap your head
24 around that.

25 Q. So did Bang Brothers ever approach you to

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1 represent them as an outside client?

2 A. Well, I represented them since -- I mean,
3 I have to check my records, but I think I
4 represented them since 2005.

5 Q. Now, did there come a time when Excelsior
6 was considering making a purchase of another site?

7 A. Yes. They wanted to buy SeanCody.com.

8 Q. What is SeanCody.com?

9 A. Sean Cody is probably, I'd say, their
10 only real -- was their only real competitor. You
11 know, their genre is what's known as gay for pay.
12 At least the fantasy on -- on the videos is that
13 these are straight men who are willing to engage
14 in sex with other men for the right amount of
15 money.

16 Q. And were you tasked in any way to setting
17 up or financing that possible acquisition?

18 A. I was not tasked with it. I was in on
19 the meetings where we were discussing possibly
20 purchasing the -- purchasing this competitor.

21 Q. And did you ever suggest a possible
22 financier?

23 A. Of course, yes. Because during the
24 conversations, there was some talk of getting
25 financing from a third-party, that my

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1 understanding was they were going to charge a,
2 what I thought was a usurious interest rate on the
3 borrowed funds. The number that I heard was 37
4 and a half percent annually.

5 Q. So did you make any alternate
6 suggestions?

7 A. I did. I suggested that Bang Brothers
8 might be interested if I gave them a call in
9 financing that, because I think they only needed
10 about \$5 million. And, well, that's probably a
11 lot to everybody here, that wasn't really a lot of
12 money to Bang Brothers.

13 Q. Did you explain when you suggested this
14 how you might have an in to suggest this to Bang
15 Brothers?

16 A. I mean, it was so commonly known that I
17 did -- I represented them, it was so often
18 discussed. You know, in fact, I think -- in
19 addition, I think I made a call from my cell phone
20 to their general counsel in the middle of a
21 meeting and said, you know, Hey, Mark, you know,
22 do you think we could work on some kind of a deal
23 for this. And his position was, Yeah, let's --
24 let's talk about it.

25 That's as far as it got, but I was hoping

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1 that at the very least, we could have a
2 competitive bid on lending us the money to get
3 that interest rate down, because we just -- can
4 you imagine the maintenance costs on \$5 million at
5 37 and a half percent a year?

6 Q. Let's talk about Eric Carrender.

7 A. Yes.

8 Q. Who is Eric Carrender?

9 A. He -- I don't remember what he did, but I
10 know that he worked at the company at the same
11 time I did.

12 Q. After you left the company, was there a
13 time when he also left the company?

14 A. Yes.

15 Q. Did he -- did he reach out to you for
16 assistance?

17 A. He did.

18 Q. Now, were you involved at all in -- let
19 me restart that. Did he have harassment claims
20 against the company?

21 A. He thought he did.

22 Q. Were you involved at all in the events
23 underlying those claims? Had that ever been
24 brought to your attention when you were at
25 Excelsior?

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1 A. No. Nobody ever even brought it up to
2 me, which I found to be strange, since I was the
3 general counsel at the time the events allegedly
4 happened.

5 Q. So did you give Mr. Carrender legal
6 advice about whether his claims were good or not,
7 or how he should pursue them?

8 A. No. I told him he had to talk to another
9 attorney, and that I would refer him to somebody,
10 but that I didn't want to talk about his actual
11 claims.

12 Q. Did you assist him in finding an
13 attorney?

14 A. Yes.

15 Q. Did you make any suggestions for how to
16 negotiate with an attorney when you are getting
17 one?

18 A. Yeah. Eric was kind of rambling, and --
19 you know, rambling character, and I could tell
20 that he probably -- any attorney that practiced
21 the way I do would probably look at him and say,
22 Get out of my office, if you are going to talk to
23 them that way. So I told him to probably be a
24 little more concise when he speaks to potential
25 counsel. And then I -- that's about the extent of

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1 it.

2 Q. Let's talk about the Respondents' claim
3 that you inappropriately contacted Chip Carter --

4 A. Yes.

5 Q. -- when he was an employee --

6 A. Right.

7 Q. -- at Excelsior.

8 A. Right.

9 Q. Had you worked with Chip Carter when you
10 were at Excelsior?

11 A. Yes.

12 Q. And what did he do?

13 A. He did marketing and communications.

14 Q. And at the time you reached out to him,
15 what were you seeking?

16 A. I had heard that there were Bar
17 complaints filed against me that had been
18 distributed to every employee at the company, and
19 I wanted to see a copy of them.

20 Q. Now, from your observations, did you work
21 with Chip in the sense of when you had -- when you
22 had press releases that had legal issues?

23 A. Sometimes. Sometimes we sent them out
24 without him reviewing them, sometimes he helped
25 review and revise them.

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1 Q. Did you observe that he had the apparent
2 authority to send out press releases on his own?

3 A. He did not have that authority. In fact,
4 he was threatened to being fired if he did so.

5 Q. Was that one of the e-mails that we
6 looked at earlier today?

7 A. Yes.

8 Q. Did you have an understanding that he had
9 the ability to bind the company?

10 A. No.

11 Q. Mr. Randazza, there was an incident in
12 which you sent an e-mail that caused controversy.
13 Can you just very briefly say what the background
14 of that was?

15 A. Yes. This is what's known as the
16 "thieving little shits" e-mail. During the -- as
17 I said before, let's go back to the BitTorrent
18 campaign, and this was very unpopular, and people
19 who -- you know, there's a whole group of people
20 who are what we call copyright abolitionists who
21 believe that enforcing copyrights this way is
22 inherently evil.

23 So somebody sent me an e-mail accusing me
24 of trying to kill gay teenagers because if they
25 got sued under this program, that they would then

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1 commit suicide rather than be defendants in a
2 lawsuit.

3 And I explained in this e-mail to this
4 person I responded, and said, you know -- first of
5 all, I don't remember the exact content of it, but
6 I do remember saying that, you know, that was all
7 kind of hooey. But, also, that Corbin Fisher does
8 have a straight product, and while it isn't
9 actually straight porn, Jason always explained it
10 to me as it's -- it's straight cover so if there
11 is a closeted gay guy who wants to look at Corbin
12 Fisher stuff, he can point to that Website, that
13 sub Website and say that he was looking at that so
14 his wife doesn't know that he's looking at gay
15 porn.

16 So I suggested that any thieving little
17 shit who gets caught with this who doesn't want to
18 be outed can just say that they were stealing
19 that. That person turned out to be -- turned out
20 to send that e-mail to a number of media outlets
21 saying that I had called every gay teenager a
22 thieving little shit.

23 Q. Did some of those media outlets publish
24 it?

25 A. Yes.

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1 Q. Did XBIZ publish it?
2 A. No. XBIZ declined to at my request.
3 Q. Did you apologize for this within the
4 company?
5 A. I did. I fell on my sword about it.
6 Q. Would you look at Exhibit 44, please?
7 A. Sure. Yes.
8 Q. Do you recognize what this is?
9 A. Yes.
10 Q. What is it?
11 A. This is an e-mail that I sent out
12 after -- what I had done was Vaughn Greenwalt
13 was -- he is now a lawyer, but at the time Vaughn
14 was a law clerk or intern that had come to work at
15 the company under me. And what I did is I asked
16 Vaughn to essentially independently critique my
17 actions and how I had -- what had happened, how I
18 did it, how I responded to it, and to give me a
19 very objective opinion. Because, you know, I
20 could very easily stand up and defend myself, but
21 I wanted to have an independent review of it.
22 Q. After this, was there further formal
23 discipline against you?
24 A. No. In fact --
25 Q. Was it something that the company tended

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1 to bring up after this point in 2011?
2 A. Not really. It was -- you know,
3 sometimes if there was some external -- if there
4 was an interview to be granted or something,
5 somebody would yell at me on the way out the door,
6 Don't call anybody a thieving little shit, you
7 know, on my way to court. I would get -- I would
8 get made fun of about it.

9 Q. Is it fair to say sometimes they would
10 joke about it?

11 A. Well, yeah.

12 Q. Would you look at Exhibit 380, please?

13 A. Yep.

14 Q. Do you recognize what that is?

15 A. Right, there you go. That's -- that's an
16 e-mail from Jason to me.

17 Q. And he says, Obviously if you call anyone
18 a thieving little shit at the event, then you can
19 credit that one to your First Amendment attorney
20 credentials?

21 A. Yes.

22 Q. With a smiley face?

23 A. Yes.

24 Q. Was that the sort of tone as time went by
25 about that prior incident?

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1 A. Yes.

2 MR. WHITE: Your Honor, it's 3:58, and I
3 could go into a different area, but it would
4 probably be like a five to ten minute area.

5 ARBITRATOR HABERFELD: I'm okay with it,
6 if you would like to, or we can recess. Whatever
7 you prefer.

8 MR. WHITE: I'm fine with recessing now
9 or whatever.

10 MS. KRINCEK: Okay.

11 ARBITRATOR HABERFELD: Okay. We'll be in
12 recess until 9:00 a.m. tomorrow morning?

13 MR. WHITE: Yes, Your Honor.

14 ARBITRATOR HABERFELD: Okay. See you all
15 then.

16 MR. WHITE: And just for the record, I've
17 disclosed people I anticipate calling, depending
18 on how far we get tomorrow. I understand from
19 Ms. Krincek that under your order, the people I
20 should anticipate possibly coming tomorrow would
21 be Mr. Gibson and the other executives of the
22 company; is that --

23 MS. KRINCEK: Yeah. I mean, I think
24 between finishing your direct and my cross, it
25 would probably take up the bulk of the day, and

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1 then you are going to have Ron Green also testify,
2 and then we'll move onto my witnesses after that.

3 MR. WHITE: Okay.

4 MS. KRINCEK: But Jason will be my first
5 one, and then I'm not sure what order the rest of
6 them will be.

7 MR. WHITE: Very well.

8 MS. KRINCEK: If you need me to pin that
9 down more, let me know. I don't know that we'll
10 get to them tomorrow.

11 MR. WHITE: That's fine. Thank you.

12 ARBITRATOR HABERFELD: Anything further
13 before we recess?

14 See you all tomorrow morning.

15 (Thereupon, the proceedings
16 were concluded at 4:00 p.m.)

17 * * * * *

18

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1 CERTIFICATE OF REPORTER

2

3 STATE OF NEVADA)
4 COUNTY OF CLARK) SS:
5
6

7 I, Jo A. Scott, Certified Court Reporter, do
8 hereby certify:

9 That I reported in shorthand (Stenotype) the
10 proceedings had in the above-entitled matter at
11 the place and date indicated. That I thereafter
12 transcribed my said shorthand notes into
13 typewriting, and that the typewritten transcript
14 is a complete, true and accurate transcription of
15 my said shorthand notes.

16 IN WITNESS WHEREOF, I have set my hand in my
17 office in the County of Clark, State of Nevada,
18 this 23rd day of February, 2015.

19

20

21


Jo A. Scott, RPR, CCR NO. 669

22

23

24

25

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EXHIBIT 2

EXHIBIT 2

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1 ARBITRATION BEFORE
2 JUDICIAL ARBITRATION AND MEDIATION SERVICE
3
4 MARC J. RANDAZZA,)
5 Complainant,)
6 vs.) Ref. No. 1260002283
7 EXCELSIOR MEDIA)
8 CORPORATION, a Nevada)
9 corporation; LIBERTY)
10 MEDIA HOLDINGS, LLC, a)
11 California limited)
12 liability company; and)
13 JASON GIBSON,)
14 individually,)
15 Respondents.)
16 _____)
17
18
19
20
21
22
23
24

**CERTIFIED
COPY**

14 TRANSCRIPT OF ARBITRATION PROCEEDINGS
15 VOLUME II
16 BEFORE THE HONORABLE STEPHEN E. HABERFELD
17 Taken on Tuesday, February 10, 2015
18 At 3800 Howard Hughes Parkway
19 Eleventh Floor
20 Las Vegas, Nevada
21
22
23
24
25 REPORTED BY: JO A. SCOTT, RPR, CCR NO. 669

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1 APPEARANCES:

2 For the Complainant:

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12 Also Present:

13 MARC J. RANDAZZA
JASON GIBSON
14 BRIAN LOWDERMAN
BRIAN DUNLAP
15

16

17 I N D E X

18 WITNESS	PAGE
19 MARC J. RANDAZZA	
20 Cont. Direct Examination by Mr. White	277
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23

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25

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1 LAS VEGAS, NEVADA; TUESDAY, FEBRUARY 10, 2015

2 8:58 A.M.

3 -000-

4

5 ARBITRATOR HABERFELD: Back on the

6 record. Anyone who is not ready?

7 I'm just going to remind Mr. Randazza you

8 are still under oath. Do you understand that?

9 THE WITNESS: I do.

10 ARBITRATOR HABERFELD: Mr. White?

11 MR. WHITE: Thank you, Your Honor.

12 CONTINUED DIRECT EXAMINATION

13 BY MR. WHITE:

14 Q. Mr. Randazza, yesterday we were talking
15 about your relationship with Xvideos, that entity.

16 Do you recall that?

17 A. Yes.

18 Q. Did your relationship with them have any
19 impact on your ability to get Corbin Fisher
20 content taken down from Xvideos?

21 A. Yes, it did.

22 Q. How so?

23 A. Well, it had a positive effect.

24 Q. Can you explain why?

25 A. Xvideos has a -- like most tube sites,

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1 has -- well, not all. Like some tube sites, has a
2 takedown request form. So you -- if you find a
3 video of yours that a user has uploaded to it and
4 you don't want it there, you can place the link in
5 that form, you send it to them, and it will go
6 into a cue, and they will get to it when they get
7 to it.

8 For example, I think if you -- at least
9 until recently, if you sent one to You Tube, it
10 would take at least a couple of days to come down.
11 Some providers take weeks to do it.

12 XVideos is probably not one of the
13 fastest ones. But I would send any Corbin Fisher
14 links directly to Xvideos CEO, and he would have
15 them removed immediately.

16 Q. Was that because of the relationship you
17 built with them when you represented them?

18 A. Yes. I called that in as a necessary
19 favor.

20 Q. Is that ability something you concealed
21 from Jason?

22 A. No.

23 Q. Would you say you bragged about your
24 ability to do that?

25 A. Yeah, that is one of my faults. But,

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1 yes, of course. I wanted to make sure that
2 everybody knew how valuable I was to them, so I
3 would brag about that.

4 In addition, they gave Corbin Fisher a
5 concession that they, to the best of my knowledge,
6 have given to no one else, which is they agreed to
7 do keyword suppression. No tube site is required
8 to do this. It doesn't -- it doesn't -- it isn't
9 required under the Copyright Act, it isn't
10 required under any defense, but I told them, Put
11 in a term that if anybody uploads a video that
12 even has the word Corbin Fisher in it, I want it
13 either reviewed or suppressed, and they did that,
14 as well.

15 Q. Let's turn to PornGuardian. Now, you had
16 had a relationship with PornGuardian prior to the
17 Oron case, correct?

18 A. Correct.

19 Q. Did that bring any benefits for
20 Excelsior?

21 A. Huge benefits.

22 Q. Such as?

23 A. Well, such as they -- as far as they told
24 me, they were giving us a big discount on takedown
25 services. Prior to that, and I'd say concurrent

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1 with that, Corbin Fisher had a program in-house
2 where they took down links. They would send these
3 DMCA takedowns to various sources where they found
4 their content that they didn't want it, and Jason
5 generally paid people a dollar per link to take
6 the links down. You can imagine thousands a month
7 might add up.

8 PornGuardian did it for a flat fee, I
9 think of -- like I think it was about \$800 per
10 month. And they took thousands and thousands
11 down. In fact, so many that at one point Jason
12 had some doubts as to how they could possibly be
13 doing that without inflating the numbers. That
14 was one benefit.

15 Q. Did you ever brag about how you were able
16 to do this for Excelsior because of your
17 relationship with PornGuardian?

18 A. I don't know if I bragged about that. I
19 mean, it was such a minor thing. We got just a
20 discount on their monthly rate.

21 Q. Was there something else that you did
22 brag about about the relationship with
23 PornGuardian?

24 A. Yes.

25 Q. What was that?

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1 A. My greatest value that my friendship with
2 them came along with is the fact that they didn't
3 just do all this takedown for Corbin Fisher. They
4 did it for pretty much every gay company in the
5 adult space. I don't -- I don't think there was
6 any company they didn't have in their portfolio.

7 So by looking at their data and having
8 access to all their back-end data, I could do
9 research on so many different Websites and so many
10 different piracy sources cross company. So, for
11 example, there might be a company that just
12 focused on us, just focused on Corbin Fisher, or
13 there might be a -- you know, a pirate operation
14 that hits us very little, but has a huge amount of
15 piracy for other Websites.

16 So you have kind of a myopic research
17 view if you didn't see all of that. PornGuardian
18 gave me, I would say, probably hundreds of
19 thousands of dollars worth of information that
20 they would normally charge that amount for, either
21 for free or a steeply discounted rate.

22 Q. So was that something you bragged about?

23 A. Oh, yeah.

24 Q. Is it fair to say that when your
25 relationships with companies through your legal

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1 work for them gave the company benefits, that you
2 went out of your way to report that?

3 A. I would be very proud of it and try to
4 drop -- you know, I would make an effort to drop
5 information about it, because I think it
6 demonstrated my value to the company.

7 Q. So on PornGuardian, you testified
8 yesterday that -- well, there was a little
9 confusion in your testimony. You clarified later.

10 Tell us how, very briefly again, clarify
11 whether -- what PornGuardian's role was in getting
12 the Oron case?

13 A. Oh, yeah. I think yesterday I did clear
14 up that. I mixed up Megaupload and Oron since
15 those cases were so markedly similar.

16 Q. So just to be perfectly clear, did you
17 get the Oron -- the information about Oron as a
18 result of representing PornGuardian?

19 A. I don't remember whether it was
20 PornGuardian or AEBN that brought it to me first.
21 I do know that one of them -- I think AEBN put
22 them on my radar, and then PornGuardian put them
23 on my -- elevated them on my list of targets
24 because I got a call from them that Oron had
25 threatened a lawsuit against PornGuardian. I want

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1 to say it was for defamation for them making
2 statements that Oron was involved in rampant
3 piracy and had -- and had -- they possibly
4 detected child pornography on their servers.

5 Q. So how did that impact your ability to go
6 after Oron?

7 A. Well, like I said, in my matrix of
8 whether I was going to say a target was a good one
9 or not, you wanted to have traceable assets, you
10 wanted to have some point of contact in the United
11 States. The fact that they had retained counsel
12 in the United States made me think that he's got
13 to be getting paid somehow, so there must be some
14 money to trace.

15 And, additionally, I thought if he did
16 actually follow through and file that lawsuit,
17 well, then we would at least be able to try to --
18 try to intervene on that lawsuit somehow and
19 remove any argument over jurisdiction.

20 You know, 12 -- 12(b)(2) arguments were
21 usually how these cases lived and died. So if
22 they were to waive the issue of 12(b)(2), that
23 would make them a great target.

24 Q. Mr. Randazza, did you for a time
25 represent both PornGuardian and Liberty in claims

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1 against Oron?

2 A. Yes. Initially I did.

3 Q. Did that come to a stop?

4 A. It did.

5 Q. Who stopped it?

6 A. I did.

7 Q. Why?

8 A. Because what I did was I approached
9 Lieberman and told him that, you know, now that I
10 had his attention and his client's attention, I
11 wanted a settlement for Corbin Fisher. He was
12 tying the two together, Corbin Fisher and
13 PornGuardian. I don't even know how I got him to
14 agree that PornGuardian should get paid, when they
15 were a potential defendant, but he apparently got
16 scared of something.

17 And I believe it was probably because
18 Porn -- you know, I explained PornGuardian's
19 relationship with all these other companies, so if
20 you didn't get PornGuardian out of the way,
21 perhaps all these other companies would come after
22 him, as well.

23 I got -- he got to a point where he was
24 going to give \$550,000 to Corbin Fisher and
25 \$50,000 to PornGuardian. PornGuardian wanted more

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1 money. And seeing that that was even
2 potentially -- that I was even going to have to
3 spend one phone call arguing with Lieberman about
4 raising that money, which could hold back the
5 rapid payment to Corbin Fisher, I immediately told
6 PornGuardian I couldn't represent them anymore and
7 handed the matter to their other attorney,
8 Mr. Aaronson.

9 Q. Now, was there a time when Oron's counsel
10 suggested that it was going to be a package deal
11 that if Oron -- they would only sign the 550 for
12 Liberty if also PornGuardian signed off on 50?

13 A. Yes.

14 Q. But after you stopped representing
15 PornGuardian, did Oron, in fact, sign the term
16 sheet that was eventually enforced?

17 A. Yes.

18 Q. Do you know whether or not they reached a
19 settlement with PornGuardian?

20 A. I have no knowledge of that. I don't
21 know one way or the other.

22 Q. All right. One of the Respondents'
23 claims regarding conflict is from a company called
24 Kink.

25 Are you familiar with that company?

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1 A. I'm very familiar with them.

2 Q. For how long have you represented them?

3 A. When it began, I'm not sure, but it was
4 when I was an associate at Weston, Garrou, so it
5 may have been as early as 2005, 2006.

6 Q. Did you ever represent them in any highly
7 publicized matters?

8 A. Yes, I did.

9 Q. What was the most highly publicized
10 matter, briefly?

11 A. It was the affectionately known
12 "fuck brief" matter.

13 Q. What was that?

14 A. That was a United States patent and
15 trademark office case in which my client, I think
16 they did it through another attorney, they tried
17 to file a US PTO registration for one of their
18 Website's trademarks, which was
19 fuckingmachines.com. It was rejected under
20 Section 2(a) of the Trademark Act, which is the
21 portion of the Trademark Act that provides that
22 immoral or scandalous trademarks cannot be
23 registered.

24 This happens to be a pet area of mine. I
25 think it's -- I think it's unconstitutional. I'd

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1 actually written my LLM thesis on it.

2 But we did a really fun brief that went
3 through the reasons why it's unconstitutional, but
4 also why the word "fuck" should no longer be
5 considered to be immoral and scandalous in today's
6 society, using all kinds of popular culture
7 references, quotes from politicians you know, how
8 it's used as not just expletive, but, you know,
9 you can use a whole sentence that says it, one of
10 the quotes was from George Carlin.

11 Q. So were you representing Kink in that?

12 A. Oh, yes.

13 Q. How would you characterize the amount of
14 publicity it got?

15 A. Huge. I mean, international publicity.

16 Q. All right. Let's turn to another claim
17 that the Respondents have?

18 A. Yes.

19 Q. Respondents made some claims about your
20 relationship with Mr. -- a Mr. Grady.

21 A. James Grady, yes.

22 Q. Who provided you with information in the
23 Oron case?

24 A. Yes.

25 Q. Do you recall how he came to your

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1 attention in connection with the Oron case?

2 A. Well, Jim had a -- I had been giving Jim
3 legal advice off and on for years. He was
4 generally represented by another attorney in
5 Colorado. But James would -- they would call me a
6 lot and ask me for second opinions on things. I
7 didn't really have that formal of a relationship
8 with him.

9 But he called me at some point after the
10 Oron matter started with -- telling me that he had
11 a source that had a lot of information about Oron.

12 Q. And did you follow up with him about
13 the -- how that source was getting the
14 information?

15 A. I did.

16 Q. Did you ever ask him about whether or not
17 it was obtained legally or illegally?

18 A. I did, because I wanted to make sure that
19 I could use it as evidence.

20 Q. Would you please take a look at
21 Exhibit 399? Let me know when you are there,
22 please.

23 A. I'm there.

24 Q. Do you recognize this e-mail exchange?

25 A. Of course.

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1 Q. Is this with Mr. Grady?

2 A. Yes.

3 Q. And were you contemplating using him as a
4 witness in hearings in Oron?

5 A. Yes.

6 Q. What was going to be his purpose?

7 A. Well, he was going to at least -- he was
8 going to give me a report on everything he knew
9 about Oron in that case.

10 Q. Were you contemplating -- for what
11 purpose in the case? What were you going to try
12 to use him try to convince the court to do?

13 A. I think this was to get my injunction.

14 Q. Was that the injunction to freeze the
15 PayPal accounts?

16 A. Yes.

17 Q. All right. Would you look at the part
18 from you to him that starts with, Okay, I need?

19 A. Yes.

20 Q. Would you read Number 2, please?

21 A. Yes.

22 Q. So this says you have to consider what
23 happens if the judge wants to know where you got
24 your information?

25 A. Yep.

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1 Q. As far as I know, it's lawfully obtained.

2 And you say, Hacker, problematic.

3 Were you trying to convey to him what to
4 say?

5 A. No. I wanted to make sure if I'm going
6 to fly this guy down, put him on the stand, I'm
7 not going to put him there if he got this
8 information improperly.

9 So I was -- he had already told me it was
10 legal. He had already told me -- he didn't tell
11 me where. He didn't want to tell me who he had
12 gotten it from, but I wanted to impress upon him
13 that, look, on July 3rd, you are going to be
14 sitting in a Federal Courthouse, so if you are
15 telling me one thing, you better not tell me
16 something different when you are my witness.

17 Q. Did you get him to send materials to you
18 that he had gathered?

19 A. I asked him to send them to Jason
20 directly.

21 Q. And did you ask him to send them in a
22 particular way?

23 A. Yes. Because I didn't know if they were
24 going to come from him or from his source, and
25 I -- he seemed very concerned about being targeted

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1 for being the source, so I told him to have them
2 sent to Jason. I didn't -- and if they are coming
3 directly from the source, I didn't want to know
4 that person's name. He can testify about that
5 later.

6 Q. So how did you have him ask -- did you
7 ask him to send them anonymously?

8 A. Yeah. I told him to put them in a box
9 and have them sent to Jason's PO Box.

10 Q. Now, when -- did Mr. Gibson receive them?

11 A. Yes.

12 Q. Did you have a conversation with
13 Mr. Gibson about them?

14 A. I told him that a package was going to be
15 coming for him that would be very useful in the
16 Oron case, and I explained to him where they were
17 coming from.

18 Q. What was his reaction?

19 A. Elation, to put it lightly.

20 Q. Did you have an understanding of where
21 these documents actually came from?

22 A. To this day, I do not know where he got
23 them. All I know is that he was getting them from
24 somebody else.

25 Q. Did you have any theories at the time?

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1 A. Well, when he first brought them to me,
2 they seemed like so -- it was probably somebody
3 who was inside Oron. My theory to this day is --
4 I'm guessing, given the way things shook out, that
5 it might have been from a guy by the name of Maxim
6 Bochenko, but I'm just guessing.

7 Q. Did that person ever have to be part of
8 any Oron settlement?

9 A. Yes.

10 Q. Did you obtain right to sue letters in
11 this case?

12 A. Yes.

13 Q. Did you obtain a closed case letter from
14 the Nevada NERC?

15 A. I did.

16 Q. Did you get an EEOC right to sue letter?

17 A. I did.

18 Q. How about California?

19 A. I did.

20 Q. Let's talk in our final category about
21 your claims for damages.

22 A. Yes.

23 Q. Now, what are you claiming in connection
24 with the Oron settlement?

25 A. The 25 percent of the proceeds, which is

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1 at least \$137,500 as 25 percent of the \$550,000.

2 Q. Are you claiming the 25,000 that you
3 advanced?

4 A. I am claiming those as money I advanced
5 as an employee.

6 Q. Would you take a look -- and, Henry,
7 could you get it -- at Exhibit 347?

8 ARBITRATOR HABERFELD: That's in addition
9 to the 25 percent?

10 MR. WHITE: Yes, Your Honor.

11 BY MR. WHITE:

12 Q. Are you claiming your severance under the
13 contract?

14 A. I am.

15 Q. Would you please turn to Exhibit 347?

16 MR. WHITEHEAD: And that should be before
17 Your Honor. But if not, let me know.

18 THE WITNESS: Okay. I got it.

19 BY MR. WHITE:

20 Q. 347 is your Amended Claim.

21 Would you please turn to Page 7?

22 ARBITRATOR HABERFELD: I don't have it
23 yet, please.

24 MR. WHITE: I beg your pardon, Your
25 Honor.

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1 ARBITRATOR HABERFELD: One moment,
2 please.

3 THE WITNESS: 347 doesn't appear to be --

4 MR. WHITE: My apologies. Let me see --

5 ARBITRATOR HABERFELD: One moment. We're
6 getting it.

7 THE WITNESS: We've got the wrong number
8 anyway.

9 MR. WHITE: Yes. I apologize. I do have
10 the wrong number. It should be 302.

11 My apologies, Your Honor.

12 THE WITNESS: Got it.

13 ARBITRATOR HABERFELD: Proceed.

14 BY MR. WHITE:

15 Q. That's your amended claim in this matter,
16 correct?

17 A. Yes.

18 Q. Would you please turn to Paragraph 75,
19 which is on page --

20 A. I got it. Page 18.

21 Q. Page 18.

22 A. Yes. I see it.

23 Q. How were you paid, daily or weekly?

24 A. Weekly.

25 Q. So when you were -- when Corbin Fisher

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1 purported to accept what you sent as a
2 resignation, did they pay you for that full week?

3 A. No.

4 Q. How much did they pay you?

5 A. For four days that week.

6 Q. And is that reflected here in your claim?

7 A. It is.

8 Q. Turning to the next page, are you
9 claiming a five percent wage increase as provided
10 in the contract starting on July 1st --

11 A. Yes.

12 Q. -- 2012?

13 A. Yes.

14 Q. Did you get that wage increase from the
15 time between July 1st and the time that you
16 ended -- that the employment at Excelsior ended?

17 A. No.

18 Q. Are you claiming unpaid vacation time?

19 Did they pay you all your unpaid vacation when you
20 were -- when the employment ended?

21 A. To the best of my memory, no.

22 Q. And then if you please turn to Page 20?

23 A. Yes.

24 Q. And I would like you to look at
25 Subsections D and E.

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1 A. Okay.

2 Q. Excuse me. C, D, and E.

3 Were you aware of amounts of settlements
4 that had been reached but had not yet been
5 received by Excelsior as of August 29th, 2012?

6 A. Yes.

7 Q. And, for instance, this refers to
8 settlements from Excubitor USA?

9 A. Uh-huh.

10 Q. Did Excelsior pay you based on the gross
11 rather than the net on that?

12 A. No. They paid me on the net.

13 Q. Were you aware that settlements had been
14 reached, but not yet received in the matter in
15 which Mr. Rushie in Pennsylvania represented you?

16 A. Yes.

17 Q. Is that the \$14,000 in Subparagraph D?

18 A. Yes. Apparently Rushie disbursed that
19 money to them, but I didn't get paid my cut.

20 ARBITRATOR HABERFELD: When you say not
21 paid your cut, not paid at all, or paid net as
22 opposed to gross?

23 THE WITNESS: No, nothing at all.

24 ARBITRATOR HABERFELD: Okay. Thank you.

25 ///

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1 BY MR. WHITE:

2 Q. Previously you had made a claim for
3 \$1,384.38 in expenses, and you've withdrawn that,
4 correct?

5 A. I believe we were shown documentation
6 that that did get paid to me, so, yes.

7 Q. And are you also seeking damages for your
8 termination after the incidents of the film and
9 the incident in the backseat of your car?

10 A. Yes.

11 MR. WHITE: Thank you, Mr. Randazza.

12 Your Honor, I don't have anything else.

13 ARBITRATOR HABERFELD: Ms. Krincek, would
14 you like to begin cross now, or would you like a
15 short break?

16 MS. KRINCEK: I can start now. I think
17 it's a little early for a break, for the morning
18 break anyways.

19 ARBITRATOR HABERFELD: Well, whatever
20 works best for you.

21 MS. KRINCEK: I'm ready to go.

22 ARBITRATOR HABERFELD: Okay. Before you
23 start, I'd just like to remind Mr. Randazza about
24 the brief conversation we had about the
25 responsibilities of your being a witness on

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1 cross-examination.

2 Anything you want to have me refresh on
3 or ask me any questions about before we start?

4 THE WITNESS: No, Your Honor.

5 ARBITRATOR HABERFELD: Okay.

6 MR. WHITE: Your Honor, one thing is that
7 obviously if Mr. Randazza were refreshed in his
8 memory from something during his cross,
9 Ms. Krincek would be entitled to see that.

10 I've instructed him, if he has things he
11 wants to say to me, to put it on a notepad, and
12 those I construe as attorney/client
13 communications.

14 ARBITRATOR HABERFELD: We'll see how that
15 goes.

16 MS. KRINCEK: Okay. I'm not sure I
17 follow that.

18 ARBITRATOR HABERFELD: I'm not sure I
19 did, either. So let's see how that goes.

20 CROSS-EXAMINATION

21 BY MS. KRINCEK:

22 Q. Mr. Randazza, near the start of the day
23 yesterday you testified about the beginning of
24 your employment relationship with Excelsior and
25 the origin of the employment agreement that was

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1 executed between yourself and Excelsior.

2 Do you recall giving that testimony?

3 A. I do.

4 Q. Can you turn to -- in Complainant's
5 exhibit binders, Exhibit Number 1?

6 A. I am there.

7 Q. And, again, this is the employment
8 agreement you and Excelsior entered, correct?

9 A. Correct.

10 Q. I want to make sure we have a clear
11 understanding of your testimony. Is it your
12 testimony that the company, and not you, drafted
13 this employment agreement?

14 A. No, that wasn't my testimony.

15 Q. So who drafted this employment agreement?

16 A. It was jointly drafted.

17 Q. By whom?

18 A. The company and myself, with the
19 assistance of counsel.

20 Q. And who sent the first draft of this
21 employment agreement?

22 A. The first draft of any employment
23 agreement I know came from Excelsior.

24 Q. Did it have --

25 A. It came from Mr. Gibson.

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1 Q. Excuse me?

2 A. It came from Mr. Gibson.

3 Q. And was it a multipage document like
4 this?

5 A. I don't recall the -- what it looked like
6 when it first came to me.

7 Q. Was it entitled Contract of Employment
8 for Corporate General Counsel?

9 A. I don't recall the exact title on it, but
10 if you have something to refresh my memory, I'm
11 sure that could -- that could help.

12 Q. Did it have a severance provision in it;
13 do you recall?

14 A. I do not specifically recall the original
15 draft having a severance provision.

16 Q. Now, you testified about some specific
17 matters, like one involving someone named Breck
18 Orshal and somebody named Justin Krueger. And I
19 believe you were trying to make the point that
20 Mr. Gibson sometimes took aggressive positions in
21 legal disputes.

22 Was that the point you were trying to
23 make?

24 A. Yes.

25 Q. Would you agree that you sometimes take

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1 aggressive positions in legal disputes?

2 A. I took the position that my client wanted
3 me to take. In fact, I often took very
4 conciliatory positions and recommended such
5 positions.

6 Q. You don't consider yourself an aggressive
7 litigator?

8 A. It -- when it serves my client's
9 interest, and -- or when my client demands me to
10 do so, despite it being against their best
11 interest, I am.

12 But I'm actually more proud of the cases
13 where I'm able to do things quickly and
14 efficiently and in a more conciliatory fashion.

15 Q. You testified early yesterday that you
16 had business cards in the name of Excelsior Media,
17 business cards in the name of Liberty Media, and
18 business cards in the name of Corbin Fisher.

19 Are you sure you had Liberty Media
20 business cards?

21 A. No, I'm not. I think I expressed a
22 little bit of cloudiness on that, but I do know
23 that I had Corbin Fisher ones and Excelsior ones.

24 Q. You worked for Excelsior from June of
25 2009 until August 29th, 2012, correct?

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1 A. That is correct.

2 Q. And you had met Mr. Gibson and done work
3 for Excelsior prior to commencing employment with
4 Excelsior, correct?

5 A. Excelsior, Liberty, Becar Management. I
6 would really say all of the Corbin Fisher related
7 companies.

8 Q. You did work for them as outside counsel?

9 A. I did.

10 ARBITRATOR HABERFELD: One moment,
11 please. Let me just check with the court
12 reporter.

13 Are you getting all of this easily?

14 THE COURT REPORTER: Yes.

15 ARBITRATOR HABERFELD: Okay. Because a
16 lot of what you are doing is you are looking down
17 at your notes, and you are going at a certain
18 quick pace, and so I wanted to make sure that the
19 court reporter is having no difficulty.

20 MS. KRINCEK: Okay.

21 MR. WHITE: Your Honor, may I also ask my
22 client to raise his head when he responds to
23 questions?

24 THE WITNESS: Sorry.

25 MR. WHITE: Thank you.

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1 BY MS. KRINCEK:

2 Q. You agree that you had a close
3 relationship with Jason Gibson during the time
4 that you worked at Excelsior; is that fair?

5 A. That is fair.

6 Q. You regularly socialized with Mr. Gibson
7 outside of work, correct?

8 A. I did.

9 Q. You went out to dinner with him
10 frequently?

11 A. I did.

12 Q. Mr. Gibson socialized with your wife and
13 children?

14 A. He did.

15 Q. You mentioned on direct examination that
16 your kids even referred to him as uncle?

17 A. Natalia did. Antonio wasn't verbal at
18 that point.

19 Q. You considered the employees at Excelsior
20 Media to be your family, correct?

21 A. I did.

22 Q. And that included Mr. Gibson?

23 A. At most of the time I was there, yes.

24 Q. Do you recall sending Mr. Gibson a video
25 of your wife doing what you referred to as pole

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1 dancing for minivan money?

2 A. Yes.

3 Q. Can I have you turn to Exhibit 318 in our
4 binders?

5 A. Okay. I see it and I've reviewed it.

6 Q. Mr. Randazza, this is an e-mail that you
7 sent to Jason Gibson on July 8th of 2011, correct?

8 A. That is correct.

9 Q. So you would have been working at
10 Excelsior for about two years at the time of this
11 e-mail?

12 A. Almost exactly two years.

13 Q. And you expressed to Mr. Gibson how
14 grateful you were for everything he does for us.

15 Do you see that?

16 A. I do.

17 Q. And "us" refers to you and your family,
18 correct?

19 A. Yes, it does.

20 Q. And Mr. Gibson took you -- I think you
21 testified about this on direct, but he took you to
22 a place called Medi the day before, which is some
23 type of weight loss center, correct?

24 A. Yes.

25 Q. And you were sincere when you sent this

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1 e-mail, correct?

2 A. Yes.

3 Q. Can you turn to Exhibit 319?

4 A. Yes.

5 Q. This is an e-mail that you sent to
6 Mr. Gibson on July 25th, so later that same month
7 in 2011, correct?

8 A. Yes.

9 Q. And you again thanked Mr. Gibson for
10 getting you to go to Medi, correct?

11 A. I did.

12 Q. And your family in Massachusetts was
13 moved by the fact that Mr. Gibson had taken care
14 of you by doing that, correct?

15 A. Yes. They thought it was very nice of
16 him.

17 Q. You enjoyed a good personal relationship
18 with Mr. Gibson at this time; is that fair?

19 A. At that time, I did, yes.

20 Q. During your employment, you went on a
21 company trip with Jason and others to Costa Rica,
22 correct?

23 A. Yes.

24 Q. Can I have you turn to Exhibit 335?

25 A. I'm there.

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1 Q. Exhibit 335, this is a series of
2 photographs of you taken on that trip to
3 Costa Rica; is that correct?

4 A. That is correct.

5 Q. And you're naked in these photos,
6 correct?

7 A. That is correct.

8 Q. And Jason and others were present when
9 these photos were taken, correct?

10 A. Correct.

11 MS. KRINCEK: If we could turn on --
12 could you turn on the projector?

13 ARBITRATOR HABERFELD: Is this an
14 exhibit?

15 MS. KRINCEK: Yes, it is.

16 (Video played.)

17 BY MS. KRINCEK:

18 Q. Marc, that's video of you from that trip
19 to Costa Rica, correct?

20 A. Yes, it is.

21 Q. Okay.

22 ARBITRATOR HABERFELD: What exhibit
23 number is that that you just set up on the screen?

24 MS. KRINCEK: Yes. That is Exhibit
25 Number 427.

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1 BY MS. KRINCEK:

2 Q. And Jason and others were present during
3 the filming of that video, correct?

4 A. I believe so.

5 Q. Next I would like to play a couple of
6 audio recordings. The first one is Exhibit 428.

7 MR. WHITE: Your Honor, may I inquire of
8 counsel briefly?

9 ARBITRATOR HABERFELD: Why don't you
10 inquire of me, and then we'll see.

11 MR. WHITE: My question is whether the
12 audio exhibits are going to be the ones of the
13 caricatures of Rodney the Redneck Racist or Samir.
14 If they are, I would object.

15 Ms. Krincek objected to me getting into
16 racial issues, so I don't think they're anymore
17 relevant based on her own objection.

18 MS. KRINCEK: Well, the purpose of my
19 audio and video exhibits, Your Honor, is to
20 establish the nature of the relationship between
21 Mr. Randazza and Mr. Gibson, and kind of the
22 boundaries that they had -- or lack of boundaries
23 thereof in their interactions --

24 ARBITRATOR HABERFELD: I think I
25 understand.

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1 MS. KRINCEK: -- with each other.

2 ARBITRATOR HABERFELD: I think I'm going
3 to have to take it instance by instance --

4 MR. WHITE: Yes, Your Honor.

5 ARBITRATOR HABERFELD: -- if there is an
6 objection. But generally, I believe, I will
7 probably overrule them, although I'm waiting to
8 hear what the specific objection is and the
9 specific instance.

10 MR. WHITE: Yes, Your Honor.

11 (Audio played.)

12 BY MS. KRINCEK:

13 Q. I won't play the whole thing,
14 Mr. Randazza, but that's a message that you left
15 for Jason Gibson, correct?

16 A. Yes.

17 Q. And the next one.

18 A. Jason loved those.

19 Q. You two had the kind of relationship
20 where you could share off-color, politically
21 incorrect, do things with each other, to each
22 other that some people might find offensive, but
23 you two were generally on the harder end of the
24 side of things.

25 Do you agree with that?

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1 A. No, I would say that's mischaracterizing.

2 Q. But you were comfortable leaving these
3 kind of sexually oriented, potentially racist
4 recordings for him?

5 A. I don't agree with your characterization.

6 MS. KRINCEK: This next recording is
7 Exhibit 428.

8 For the record, Your Honor --

9 ARBITRATOR HABERFELD: What did you just
10 play? I thought that was 428.

11 MS. KRINCEK: I'm sorry. They are both
12 on 428.

13 ARBITRATOR HABERFELD: Okay. Are they
14 separated by A or B, or are they just run on, or
15 what? What do you want to tell me about that, for
16 the record?

17 MS. KRINCEK: Yeah. On 428, it's a disc,
18 and so there is two separate audio files on there,
19 so it appears like it is on the screen right here,
20 and that's the same way it is on the CD that's in
21 your binder.

22 ARBITRATOR HABERFELD: Okay. Are there
23 transcriptions? I didn't -- I didn't open up.
24 Are there transcriptions, or are they just the
25 CDs, or how are they presented in evidence?

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1 MS. KRINCEK: They are on CDs in your
2 binder.

3 ARBITRATOR HABERFELD: Okay. Very good.

4 (Audio played.)

5 BY MS. KRINCEK:

6 Q. Mr. Randazza, that's also a recording
7 that was made, and Jason Gibson was present when
8 you made that recording or when you recorded it,
9 correct?

10 A. Yes. That was a character Rob the
11 Amazing Racist.

12 Q. Thank you.

13 A. Based on hate mail the company received.

14 Q. There is no question pending, but thank
15 you.

16 ARBITRATOR HABERFELD: Is there a date
17 for the recordings that's at all material here for
18 when these were made?

19 MS. KRINCEK: I don't have the date of
20 the recordings, other than it was during the
21 course of Mr. Randazza's employment.

22 ARBITRATOR HABERFELD: Okay.

23 THE WITNESS: Your Honor, I can recall
24 approximately.

25 ARBITRATOR HABERFELD: That's fine.

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1 There is no question. I'm just speaking with
2 Ms. Krincek.

3 BY MS. KRINCEK:

4 Q. You're alleging in this arbitration that
5 Mr. Gibson harassed you because you are a straight
6 male; is that correct?

7 A. Mr. Gibson's aggression towards people
8 was usually based on whatever immutable
9 characteristics they had that he could use against
10 them.

11 Q. That wasn't my question. You have a
12 claim for harassment in violation of state and
13 Federal law?

14 A. Correct.

15 Q. And that claim alleges that Mr. Gibson
16 harassed you because you are a straight male; is
17 that your allegation?

18 A. As a straight male, yes.

19 Q. Is it fair to say that until 2012, you
20 had no suspicions that Jason did not supposedly
21 like the fact that you were a straight male?

22 A. I wouldn't be able to testify that I had
23 no suspicions, but there was never any -- that I
24 can recall, any negative action toward me.

25 Q. Right. You've identified two instances

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1 to support your claim of harassment; the first
2 incident was the filming in your office in
3 April 2012, correct?

4 A. That is correct.

5 Q. And the second incident was the car ride
6 home from the Lake Mead company outing on
7 August 9th, 2012, correct?

8 A. Correct.

9 Q. You sent Mr. Gibson videos of your kids
10 from time to time, correct?

11 A. I did.

12 Q. And you did that because you liked to
13 send him videos of your kids, correct?

14 A. Yes, I would often. I was a proud dad,
15 so if my kids did something cute, I would send
16 them to most everybody I knew.

17 Q. Even though you're now alleging
18 Mr. Gibson had animus towards you because you are
19 a married straight man, isn't it true that you,
20 your wife, and your kids stayed with Mr. Gibson at
21 his home that he shared with his partner for
22 extended periods of time?

23 A. That is true.

24 Q. Isn't it true that until you presented
25 Mr. Gibson with the settlement agreement with Oron

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1 for his review on August 13th, 2012 that called
2 for the \$75,000 bribe to you or your firm, that
3 you and Mr. Gibson were getting along fine?

4 A. That is not true at all.

5 Q. Isn't it true that up until August 5th,
6 2012, you were reporting that you liked working
7 for Mr. Gibson?

8 A. I may have. I really don't recall what
9 you are referring to.

10 Q. Can you turn to Exhibit 322?

11 A. Yeah. Here we go.

12 Q. Mr. Randazza, this is an e-mail at the
13 top e-mail on the first page that you sent to
14 Mr. Gibson on August 5th, 2012, correct?

15 A. Yes.

16 Q. Can you read for me the last two
17 sentences of the first paragraph of your e-mail to
18 Mr. Gibson?

19 A. In the good news department, that? Is
20 that where you want me to be in?

21 Q. The first paragraph --

22 A. Oh, I'm sorry.

23 Q. -- last two sentences.

24 A. I like working for you. I don't want to
25 see the business sold to someone who I will not

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1 get along with as well as I get along with you
2 guys.

3 Q. Thank you. And when you say in that
4 e-mail, I like working for you, you are referring
5 to Mr. Gibson, correct?

6 A. I'm -- well, I think I'm referring to
7 plural, so Mr. Gibson, Mr. Lowderman, you guys,
8 but, yes.

9 Q. You are referring to --

10 A. Jason is included in that -- in that
11 plural.

12 Q. You don't dispute that by early
13 August 2012 you were still regularly socializing
14 with Mr. Gibson outside of work, do you?

15 A. I probably did.

16 Q. I think you testified earlier this
17 morning that you filed a Charge of Discrimination
18 with the Nevada Equal Rights Commission and EEOC
19 against the company, correct?

20 A. I did.

21 Q. Can you turn to Exhibit 310?

22 A. I can.

23 Q. Is this a copy of the Charge of
24 Discrimination that you filed against the company?

25 A. Yes, it is.

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1 Q. And on the bottom of each of the three
2 pages of the Charge, you signed each page under
3 penalty of perjury, correct?

4 A. Correct.

5 Q. And you filed this Charge on January 30th
6 of 2013, correct?

7 A. Correct.

8 Q. And since you were signing the Charge
9 under penalty of perjury, you were careful to make
10 sure the statements you were making were true and
11 accurate; is that fair?

12 A. I would say some of them I was a little
13 careless in reviewing. An associate had prepared
14 this for me.

15 Q. Who prepared the Charge of Discrimination
16 for you?

17 A. Jay DeVoy wrote the original draft of it.

18 Q. And then you reviewed it, and you signed
19 it, correct?

20 A. Correct. He didn't seem to have all the
21 dates correct.

22 Q. But you signed it nonetheless, correct?

23 A. Nonetheless, I signed it.

24 Q. On Page 2 of the Charge, Mr. Randazza,
25 can you look at the section titled Sexual

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1 Harassment?

2 A. Yes.

3 Q. You stated under oath in the first
4 sentence under that topic, On or about April 1,
5 2012, I received a text message from Mr. Gibson
6 indicating that he was filming an adult sex scene
7 in my office.

8 A. Yes.

9 Q. In the same text message, he made the
10 comment, quote, Your wife's bush is also in the
11 scene --

12 A. Correct.

13 Q. -- end quote. And that was referencing a
14 painting depicting George Bush my wife had given
15 me to hang in my office. Although I was
16 embarrassed and uncomfortable with the nature of
17 the text message, I initially believed it was sent
18 in jest.

19 A. Yes.

20 Q. Now, we looked at the texts you exchanged
21 with Mr. Gibson yesterday. For the record, they
22 were Complainant's Exhibit 27.

23 A. Yes.

24 Q. Can you go back to those now? And if you
25 would like to stay in the same binder, you can

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1 look at 330, which is an identical exhibit we
2 have.

3 A. Okay.

4 Q. On the bottom of the first page of 330 --

5 A. Yes.

6 Q. -- Mr. Gibson texted you and said, I'm
7 shooting gay porn on your office desk and couch,
8 correct?

9 A. Yes.

10 ARBITRATOR HABERFELD: Could we do this
11 by your Bates numbers, EMC -- this is 459, for the
12 record?

13 MS. KRINCEK: Sure.

14 ARBITRATOR HABERFELD: That would be
15 helpful for me to have reference in the record.

16 MS. KRINCEK: Okay.

17 ARBITRATOR HABERFELD: Unless you think
18 there is another or better way to do that.

19 MS. KRINCEK: No, that's fine.

20 THE WITNESS: Okay. I see that message.

21 BY MS. KRINCEK:

22 Q. You didn't receive a text from Mr. Gibson
23 about shooting in your office on April 1st,
24 correct? It was about three weeks later that you
25 received that text?

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1 A. Yeah, April 22nd.

2 ARBITRATOR HABERFELD: I'm also -- sorry.

3 Can I ask, would it also be helpful to refer, do
4 you see at the far left margin there is some kind
5 of reference by number?

6 MS. KRINCEK: Sure.

7 ARBITRATOR HABERFELD: Does that mean
8 anything that would assist us in identifying --
9 for ease of identification in getting to it?

10 MS. KRINCEK: They should be numbered. I
11 believe when the texts are downloaded and printed
12 out, they come out numbered consecutively.

13 ARBITRATOR HABERFELD: Okay.

14 MS. KRINCEK: So I can refer to that
15 number, as well.

16 ARBITRATOR HABERFELD: If you would do
17 that, that would be helpful to me. Thank you.

18 THE WITNESS: Okay. So we're looking at
19 23605?

20 BY MS. KRINCEK:

21 Q. Correct.

22 A. Okay. What can I answer for you?

23 Q. Well, you just answered that question,
24 but I would like you to toggle back to the Charge,
25 but still --

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1 A. Okay.

2 Q. -- keep your hand on the text messages.

3 A. Okay.

4 Q. The next sentence in your sworn Charge
5 you wrote about -- you said, In the same text
6 message, he made the comment, quote, your wife's
7 bush is also in the scene.

8 You put quotes around that statement like
9 it was a direct quote from Mr. Gibson's text,
10 correct?

11 A. Yes.

12 Q. Going back to the text exchange between
13 yourself and Jason, is that a direct quote
14 anywhere that appears in this text exchange?

15 A. It is not. It is an inaccurate
16 paraphrase of 23663.

17 Q. And it is also not in the same text
18 message when Mr. Jason told you he was going to
19 shoot porn in your office as it says in your
20 Charge, correct?

21 A. That's true. It's in a separate text
22 message.

23 Q. In your sworn Charge, you also state that
24 you were embarrassed and uncomfortable with the
25 nature of the text message that Mr. Gibson sent,

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1 correct?

2 A. Yes.

3 Q. Now, after Mr. Gibson texted you and
4 said, I'm shooting gay porn on your office desk
5 and couch, if you turn the page to EMC460, Text
6 Number 23622, what was your response?

7 A. I'm sorry. What exhibit, 460?

8 Q. Exhibit 330.

9 A. Oh, I'm sorry. Okay.

10 Q. The texts, still. I gave the Bates stamp
11 number, which is EMC460.

12 A. Okay.

13 Q. So Mr. Gibson texted you to alert you he
14 was shooting gay porn in your office, and what was
15 your response?

16 A. Don't get jizz on my briefs.

17 Q. Does your response make you embarrassed
18 and uncomfortable?

19 A. My response?

20 Q. Your response.

21 A. No, my response does not make me
22 embarrassed or uncomfortable.

23 Q. The next text, which is from Mr. Gibson
24 to you, Number 23661, Mr. Gibson texted you,
25 Olivia squirted all over your desk and floor.

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1 Sharon won't have time to clean until end of next
2 week.

3 And your response was?

4 A. My response was a sarcastic response of,
5 I don't want it cleaned up.

6 Q. So did that portion of Mr. Gibson's text
7 make you embarrassed and uncomfortable?

8 A. Not until I realized that it was true and
9 that he was not joking.

10 Q. I think you previously testified on
11 direct that you are not someone that is easily
12 offended; is that correct?

13 A. No, I am not easily offended.

14 Q. In fact, you once asked your female
15 assistant, Erika Dillon, in the workplace to give
16 you a handjob, correct?

17 A. No, that is inaccurate.

18 Q. You are denying that you asked your
19 assistant to give you a handjob?

20 A. Yes, I'm denying that I ever requested
21 that she do so.

22 Q. Can you -- I'm going to get you your
23 deposition transcript --

24 A. Sure.

25 Q. -- to take a look at.

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1 A. Just call my attention to the fact that
2 those words were exchanged, that I will say. That
3 is my testimony.

4 Q. Well, let's look at your deposition
5 transcript.

6 MR. THOMAS: Do you want me to grab it
7 from here?

8 MS. KRINCEK: Yeah.

9 MR. THOMAS: Is it in Volume 1?

10 MS. KRINCEK: It's -- it might be in
11 Volume 2.

12 MR. WHITE: Which exhibit should I be
13 looking at?

14 MS. KRINCEK: Do you have the witness
15 copies of exhibits?

16 MR. WHITE: I have one on my screen. Do
17 you object to me -- Your Honor, would it be
18 acceptable if I show Mr. Randazza the version on
19 my screen as Ms. Krincek --

20 MS. KRINCEK: It might be easier if we
21 have the paper copy.

22 MR. WHITEHEAD: We also have the paper
23 copy, as well, of the deposition.

24 MR. WHITE: Mr. Whitehead, would you
25 please hand that to Mr. Randazza?

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1 THE WITNESS: Thank you.

2 BY MS. KRINCEK:

3 Q. Can you turn to Page 58 of your
4 deposition transcript?

5 A. Yes. I'm there.

6 ARBITRATOR HABERFELD: If you will call
7 out page and line --

8 MS. KRINCEK: Sure.

9 ARBITRATOR HABERFELD: -- for the record
10 and for Mr. White, please.

11 BY MS. KRINCEK:

12 Q. Page 58, Lines 4 through 12.

13 A. 4 through 12, yes.

14 Q. Question: Do you recall suggesting to
15 Erika Dillon in the workplace that she give you a
16 hand job?

17 Answer: That was not what happened.

18 Question: What happened?

19 Answer: I recall Erika walked in and
20 said, Do you want anything else? And I did
21 jokingly say that. Neither of us understood it to
22 be a request, nor would I have accepted a handjob
23 had it been offered.

24 A. Correct.

25 Q. Do you see that?

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1 A. Yes.

2 Q. So you did ask your assistant for a
3 handjob in the workplace?

4 A. No, that's not what that is. If you are
5 making a joke with somebody, that's different.

6 Tell somebody, Would you go jump off of a bridge?
7 You don't really want them to jump off a bridge.

8 Q. Well, you made the request. It was just
9 a joke, correct?

10 A. Then it's not a request. That's a joke,
11 if you -- it's what I said in the depo.

12 Q. Can you turn back to Exhibit 330? You
13 are still there, which is the text exchange.

14 A. Sure.

15 Q. And can you go to EMC464?

16 A. Okay. I'm there.

17 Q. And this is, for the record, the portion
18 of the text exchange where you are texting with
19 Mr. Gibson about the scene having been filmed in
20 your office?

21 A. Yes.

22 Q. Text Number 23786, the second from the
23 bottom?

24 A. Yes.

25 Q. This is your text to Mr. Gibson saying,

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1 It's your building, it's your desk, you can do
2 with it as you please, correct?

3 A. Yes.

4 Q. And Mr. Gibson responded and said, Don't
5 be butthurt. This is the guy that jokes with our
6 female paralegal about needing a handjob in front
7 of the CEO, right? No disrespect was meant, but
8 you know that already. And that text was sent
9 five hours before we shot in your office. You are
10 probably the only First Amendment attorney in the
11 biz to have a hot scene filmed in his office.

12 Do you see that?

13 A. I do.

14 Q. Mr. Gibson used the word "butthurt" in
15 his text response to you, correct?

16 A. Correct.

17 Q. Can you go back to 310, which is your
18 Charge of Discrimination?

19 A. Okay.

20 Q. Under Sexual Harassment on Page 2.

21 A. Yes.

22 Q. The last sentence, you wrote, To my
23 surprise, Gibson offered no apology for violating
24 my workspace; instead he made yet another
25 embarrassing comment suggesting that I not be, and

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1 you put the word "butthurt" in quotes, about the
2 incident, correct?

3 A. Correct.

4 Q. Now, you aren't really embarrassed by the
5 use of the term "butthurt," correct?

6 A. When it is used to be dismissive about
7 something that I care about, I find it
8 embarrassing. But the mere word itself, no.

9 Q. That's a word that you use, correct?

10 A. Sure.

11 Q. Can I have you turn to Exhibit 302?

12 A. Okay. I'm there.

13 Q. Exhibit 302, Mr. Randazza, is the Amended
14 Arbitration Claims you filed in this matter,
15 correct?

16 A. Correct.

17 Q. Can you please turn to Page 29 of your
18 Amended Arbitration Demand?

19 A. Okay. I'm there.

20 Q. Can you please read Paragraph 120 and the
21 first sentence of 121?

22 A. On April 22nd, Mr. Gibson ordered Corbin
23 Fisher employees and contractors to engage in
24 sexual acts in Mr. Randazza's office and on his
25 desk. Corbin Fisher employees filmed this

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1 interaction, which was released on one of Corbin
2 Fisher's Websites as a pornographic scene for
3 viewing download and/or purchase. Mr. Gibson
4 informed Mr. Randazza after the fact that he had
5 done so via text message. That text message
6 alluded to Mr. Randazza's wife's "bush."

7 Q. That's it. You can stop there.

8 A. Oh, okay.

9 Q. So in your Charge you said Mr. Gibson
10 texted you to alert you to the filming on or about
11 April 1st, and in your arbitration demand you say
12 he texted you to alert you after the fact of the
13 filming, correct?

14 A. Correct.

15 Q. Neither of those are true, though,
16 correct?

17 A. He did let me know after the fact.

18 Q. But he first alerted you before the
19 filming took place, correct?

20 A. I don't believe so. The text message
21 didn't suggest that.

22 Q. The text message that says he's filming
23 gay porn in your office?

24 A. That sounds to me like it's happening
25 right now.

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1 Q. Well, certainly wasn't after the fact
2 that he texted you, as you put down in your
3 arbitration demand, correct?

4 A. I don't know exactly what time he filmed
5 the scene and what time he told me. I mean, I do
6 know -- we do know what time he told me, but I
7 don't know if there is any record of what time the
8 scene was actually filmed.

9 Q. Right. So you don't know whether it's
10 accurate that he -- what you said in your
11 arbitration demand, that he texted you after the
12 fact?

13 A. The text message suggests to me that it
14 happened after it commenced. Perhaps he wasn't
15 done.

16 Q. Can you please turn to Page 11,
17 Paragraph 39?

18 A. Sure.

19 Q. Can you read the first sentence of
20 Paragraph 39?

21 A. Consistent with the above, in April 2012,
22 without Mr. Randazza's knowledge or consent,
23 Mr. Gibson directed Excelsior employees to perform
24 sex acts in Mr. Randazza's personal office, on his
25 desk, and on top of photos of his wife and toddler

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1 children.

2 Q. You're aware that Excelsior produced in
3 discovery the video and still photos that were
4 taken in your office on April 22nd, 2012, correct?

5 A. I am aware of that.

6 Q. And you reviewed the photographs and part
7 of the video that showed your desk at your
8 deposition, correct?

9 A. Correct.

10 Q. Your allegations that sex acts were
11 performed on top of photos of your wife and
12 toddler children is not true, correct?

13 A. I would not say that.

14 Q. You have viewed either video footage or
15 still photographs of people having sexual --
16 engaged in sexual acts on top of photos of your
17 toddler children and wife?

18 A. The photos were beneath the parties,
19 based on where I found them.

20 Q. I thought you testified they were
21 scattered to the side --

22 A. Yes.

23 Q. -- on direct.

24 So when they were beneath the parties,
25 what does that mean? Where were they?

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1 A. I don't know where they were during all
2 of the filming.

3 Q. So you don't have any basis to make this
4 allegation that people had sex on top of pictures
5 of your wife and kids, right?

6 A. That is inaccurate.

7 Q. So what's your basis, then, for making
8 that allegation?

9 A. I found the photos scattered on the floor
10 as if they had been pushed off the desk during
11 whatever tryst took place on my desk, and then
12 thereafter, based on where they were, if you look
13 at the whole scene. It's not inaccurate to say
14 that they were above photos of my wife and kids.

15 Q. So you have looked at the whole scene
16 that was filmed?

17 A. I don't know if I've watched it end to
18 end, but I forwarded through parts that were
19 either irrelevant or not that -- that I didn't
20 want to continue watching.

21 Q. And you've never actually seen any photos
22 or video where people are having sex on top of
23 your wife and kids' pictures, correct?

24 A. That would not be an accurate
25 characterization of what I just said.

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1 Q. Can we go back to your deposition
2 transcript?

3 A. Sure.

4 Q. Page 69.

5 A. Yes.

6 Q. I'm going to read from Page 69 --

7 A. Yes.

8 Q. -- lines 13 to 16.

9 A. Yes.

10 Q. Question: But you've never actually seen
11 any photos or videos where people are having sex
12 on top of your wife or your kids' pictures,
13 correct?

14 No.

15 And you do -- you do recall looking at
16 the still photos that were taken in your office?

17 I recall seeing some stills.

18 Okay. In those still photos, no one is
19 having sex on top of pictures of your wife and
20 kids in those pictures, correct?

21 I'm sorry. I honestly cannot recall any
22 particular details about the photos.

23 I'm sorry. I must have mismarked that
24 cite, so I'll look at it the during a break to
25 clear that up.

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1 A. Okay.

2 Q. Isn't it true, Mr. Randazza, that part of
3 your strategy in this case was to include
4 allegations of an inflammatory sexual nature to
5 foster fear into Mr. Gibson or the company so they
6 wouldn't make your dispute with it public?

7 MR. WHITE: I'm going to object to the
8 extent that talking about strategy would require
9 him to reveal attorney/client communications.
10 Otherwise, I won't object.

11 ARBITRATOR HABERFELD: Do you want to
12 rephrase, or do you want to stand on the question
13 as phrased?

14 MS. KRINCEK: Well, I'll try to rephrase.

15 BY MS. KRINCEK:

16 Q. You're including allegations of an
17 inflammatory sexual nature because you didn't want
18 the company to make your dispute with it public,
19 that's the reason that you put in the sexual
20 allegations, correct?

21 A. There is no accuracy to that statement
22 whatsoever.

23 Q. Do you know who Chip Carter is?

24 A. Yes.

25 Q. His real name is John Thurston Carter,

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1 correct?

2 A. I didn't know his middle name is
3 Thurston.

4 Q. You told Mr. Carter that Jason not
5 wanting the sexual harassment stuff out there was
6 a fear you tried to foster, correct?

7 A. I don't recall telling him that.

8 MR. WHITE: I would like to get the
9 deposition transcript of Chip Carter, and I'm
10 going to use an exhibit from that.

11 If you can get that for the arbitrator.

12 And it is Exhibit 89.

13 MR. WHITEHEAD: I'm sorry?

14 MR. WHITE: Chip Carter.

15 ARBITRATOR HABERFELD: Mr. Thomas, can I
16 ask you to come to assist in finding that exhibit
17 for me. You probably know where it is faster than
18 I can find it.

19 MS. KRINCEK: It's in the QUVX Bates
20 stamped documents.

21 ARBITRATOR HABERFELD: Will you give as a
22 page number?

23 MS. KRINCEK: Sure. 2006 -- 2016 to
24 2000 --

25 ARBITRATOR HABERFELD: I think we're

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1 almost there. We have it.

2 THE WITNESS: Exhibit 89?

3 BY MS. KRINCEK:

4 Q. Exhibit 89, QUIVX2016 --

5 A. Okay.

6 Q. -- to 2017.

7 And let me have --

8 A. I'm sorry. Which Bates numbers should I
9 be looking at?

10 Q. Start on 2016.

11 A. Okay. Okay. I'm there.

12 Q. And near the bottom, the first one, the
13 first text that I'm going to refer to is the fifth
14 from the bottom.

15 Do you think he may have sent it to XBIZ,
16 AVN, or my other clients?

17 Do you see that?

18 A. I do.

19 Q. So this is a text exchange that you are
20 having with Mr. Carter after Mr. Carter has
21 provided you with a copy of the Bar complaint?

22 A. Okay.

23 Q. So you text Mr. Carter, and you say, Do
24 you think he may have sent it to XBIZ, AVN or my
25 other clients, correct?

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1 A. Yes.

2 Q. And then Mr. Carter's response is the
3 very last one on the page according to the phone
4 numbers, he says, No, just the Bar, I think. I'm
5 not sending press out --

6 A. Okay.

7 Q. -- I asked.

8 And then on the following page, 2017,
9 your response is, Wow. So there is a line of
10 decency.

11 Do you see that?

12 A. Yes.

13 Q. And Chip responded -- or, I'm sorry. And
14 you responded, Or are they afraid of the negative
15 PR if the public sees the bullshit.

16 Do you see that?

17 A. Yes.

18 Q. And Chip responded, Oh, no. It just
19 raises too many questions, and he doesn't want the
20 sexual harassment stuff out there. And you
21 responded, Yep, a fear I tried to foster, correct?

22 A. Yes.

23 Q. Now, going back to your Amended
24 Arbitration Demand, you also stated in
25 Paragraph 39 of that that Mr. Gibson directed

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1 Excelsior employees to perform the sex acts filmed
2 in your office?

3 A. I'm sorry. Can you --

4 Q. You don't have to read it. I --

5 A. Okay.

6 Q. But in that paragraph, you allege that
7 Mr. Gibson directed the Excelsior employees to
8 perform the sex acts filmed in your office?

9 If you would like to go back and
10 reference that paragraph to confirm that, I'm
11 happy to give you the opportunity to do that.

12 A. Okay.

13 Q. It's Paragraph 39 on Page 11 of
14 Exhibit 302.

15 A. 39, Page 11.

16 Q. Paragraph 39.

17 A. Okay. Okay. I'm there.

18 Q. You allege that Mr. Gibson directed
19 Excelsior employees to perform the sex acts filmed
20 in your office, correct?

21 A. Yes.

22 Q. You don't know who the individuals were
23 that were filmed in your office that day, correct?

24 A. You mean who the actors were?

25 Q. Correct.

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1 A. I couldn't tell you exactly who the
2 actors are.

3 Q. And you don't know whether or not they
4 were employees of Excelsior, correct?

5 A. As opposed to independent contractors?

6 Q. Correct.

7 A. No, I don't have any knowledge of their
8 employment status.

9 Q. You did -- you reviewed your arbitration
10 demand before it was served; is that fair?

11 A. Yes.

12 Q. Do you have any firsthand knowledge
13 whether it was Mr. Gibson or someone else, like
14 Aaron Anderson, that picked your office to film
15 that day?

16 A. I'm basing my knowledge on Mr. Gibson's
17 text message that says, I'm filming porn in your
18 office.

19 Q. Now, on direct testimony yesterday, it
20 seemed that you were indicating that even though
21 you didn't see any evidence of fluids on your
22 leather desk personally, that you were offended
23 that fluids might have been present on your
24 leather desk, which I believe you described as
25 porous, correct?

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1 A. Correct.

2 Q. At one time you had in your home that you
3 resided in with your wife and children a couch
4 that Liberty Media had used in pornographic
5 scenes, correct?

6 A. Yes.

7 Q. And you had boasted to people that the
8 couch had been used in porn scenes, correct?

9 A. Yes.

10 Q. And would it be crazy to think that some
11 fluids might have made it onto the couch when
12 Liberty Media -- when Liberty Media used that
13 couch for filming?

14 A. I'm sure it happened at some point in its
15 history.

16 Q. Yet you still found it suitable to put in
17 your personal residence, correct?

18 A. Yes.

19 Q. Can you turn to Exhibit 315?

20 A. Yep. Okay.

21 Q. Exhibit 315, Mr. Randazza, is an e-mail
22 you sent to Jason Gibson and Andrew Rasmus on
23 November 28th of 2009, correct?

24 A. Correct.

25 Q. And the attached photo is a picture of

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1 your wife on that couch?

2 A. Yep.

3 Q. Correct?

4 A. Yes.

5 Q. This is Exhibit 315.

6 A. Yes.

7 Q. You were comfortable sharing a photo of
8 this nature with Mr. Gibson --

9 A. Yes.

10 Q. -- of your wife, you being a straight
11 male, fair?

12 A. Yes.

13 Q. Is it true that you invited Liberty Media
14 to film in your own personal residence?

15 A. I told them that if they needed a
16 location, they were welcome to use portions of my
17 house.

18 ARBITRATOR HABERFELD: What was the
19 answer, please, Ms. Reporter?

20 (Whereupon, the pertinent part of the record
21 was read back by the court reporter.)

22 ARBITRATOR HABERFELD: "Them," who is
23 "them"?

24 THE WITNESS: Liberty Media.

25 ARBITRATOR HABERFELD: Liberty Media?

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1 THE WITNESS: Yes.

2 ARBITRATOR HABERFELD: Who, people?

3 THE WITNESS: I'm sorry?

4 ARBITRATOR HABERFELD: Could you identify
5 the people you said that to?

6 THE WITNESS: Oh, I'm sure that I said
7 that to Jason.

8 ARBITRATOR HABERFELD: Okay.

9 BY MS. KRINCEK:

10 Q. You probably said it to other people,
11 too?

12 A. Probably.

13 Q. I want to turn to talking about the
14 incident that occurred on August 9th, 2012 in the
15 car ride that you talked about earlier that
16 followed a company sponsored houseboat outing to
17 Lake Mead during the day, correct?

18 A. Correct.

19 Q. Do you recall that employees were
20 permitted to bring their families on that outing?

21 A. Yes.

22 Q. Do you recall that Henry Leonard, the
23 CFO, brought his children?

24 A. I don't have any particular recollection
25 of that.

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1 Q. Let me have you go back to your Charge of
2 Discrimination, which is 310.

3 A. Okay.

4 Q. And the third page of your Charge of
5 Discrimination --

6 A. Okay.

7 Q. -- you say, On August 9th, 2012, Gibson
8 insisted that I attend a party with him and other
9 members of the staff. After the event, Gibson
10 directed that I take him and another employee to
11 the airport.

12 Do you see that?

13 A. Yes.

14 Q. You weren't taking anyone to the airport
15 that day, correct?

16 A. No. That is completely erroneous.

17 Q. And you offered to drive Mr. Gibson back
18 to the office?

19 A. Yes, that's true.

20 Q. Mr. Gibson didn't direct that you take
21 him, you offered?

22 A. I did, yes.

23 Q. And Cameron Frost and David McCoig were
24 also in the car, correct?

25 A. They were.

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1 Q. Mr. Frost sat in the front passenger's
2 seat, correct?

3 A. He did.

4 Q. You were obviously in the driver's seat?

5 A. Correct.

6 Q. Mr. Gibson and Mr. McCoig sat in the
7 backseat, correct?

8 A. Correct.

9 Q. And there was a five-point harness child
10 seat in the backseat, as well, correct?

11 A. Correct.

12 Q. And my understanding is that was
13 positioned behind the passenger's seat, correct?

14 A. Correct.

15 Q. Now, you are alleging that Mr. Gibson
16 performed fellatio on Mr. McCoig during the ride
17 back to the office, correct?

18 A. Correct.

19 Q. Yesterday you testified that Mr. McCoig
20 and Mr. Gibson were side-by-side in the center and
21 back driver's seat because you had the car seat
22 behind the passenger's seat, correct?

23 A. Correct.

24 Q. And it was your testimony that Mr. Gibson
25 and Mr. McCoig were in those seat positions when

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1 the alleged oral sex act took place, correct?

2 A. Correct, yes.

3 Q. You are not saying that Mr. McCoig was
4 sitting in the child car seat when the sex act
5 took place, are you?

6 A. The blowjob itself did not occur while he
7 was sitting in the child seat. He climbed in and
8 out of the child seat a few times, and actually
9 broke it.

10 Q. That's when he was throwing up?

11 A. No, that was afterwards.

12 Q. Now, in your prearbitration brief, it
13 says that Mr. McCoig was seated in the child seat
14 when the oral sex act occurred, and that's
15 incorrect, right?

16 A. That is incorrect.

17 Q. Mr. McCoig on that ride to the office was
18 very drunk, correct?

19 A. He appeared to be so.

20 Q. You had to pull over because he was
21 throwing up, correct?

22 A. No, because he said he had to throw up,
23 yes.

24 Q. And you asked him to hold off, and you
25 picked the Mercedes dealership for him to throw up

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1 because you had a grudge against it, correct?

2 A. That is why I stopped in that particular
3 spot.

4 Q. And Mr. McCoig also threw up out your
5 window a second time, correct?

6 A. He did.

7 Q. And you're aware that Mr. Gibson denies
8 that an act of oral sex occurred in the backseat
9 of your car, correct?

10 A. I am aware of his denial.

11 Q. And you are aware that Mr. Frost denies
12 that an act of oral sex occurred in the backseat
13 of your car, correct?

14 A. That's what I've been told, yes.

15 Q. While you were employed by Excelsior, you
16 drafted company policies, correct?

17 A. Yes.

18 Q. And you were responsible for reviewing
19 and updating the company handbook, correct?

20 A. I did work on that, yes.

21 Q. And you were familiar with the company's
22 harassment policy, correct?

23 A. Correct.

24 Q. And as an attorney, you are familiar with
25 the concept that employees feeling harassed can

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1 file a charge with the EEOC, correct?

2 A. Correct.

3 Q. Now, you never complained while you were
4 employed at Excelsior that you were being sexually
5 harassed, correct?

6 A. I complained about the events to Kirk.

7 ARBITRATOR HABERFELD: Question? Let's
8 have the question read back.

9 (Whereupon, the pertinent part of the record
10 was read back by the court reporter.)

11 ARBITRATOR HABERFELD: Thank you.

12 BY MS. KRINCEK:

13 Q. Do you recall what specifically you said
14 to Mr. Addison?

15 A. I don't remember what I specifically said
16 to him.

17 Q. And as you sit here today, you are not
18 sure what day you supposedly met with Mr. Addison,
19 correct?

20 A. I am not sure, no.

21 Q. And you never filed a Charge of
22 Discrimination while you were employed, correct?

23 A. Not while I was employed, no.

24 Q. I'm going to turn to a new topic, which
25 is the TNAFlix matter that you handled for the

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1 company.

2 A. Okay.

3 ARBITRATOR HABERFELD: How long do you
4 have on that?

5 MS. KRINCEK: A fair amount of time,
6 maybe about a half. So if it's -- now is an
7 appropriate time to break.

8 ARBITRATOR HABERFELD: Are you signaling?
9 I'm going to interpret that as a signal that this
10 might be a good time for us to take our first
11 break.

12 MS. KRINCEK: It probably is.

13 (Whereupon, a recess was taken.)

14 ARBITRATOR HABERFELD: Ms. Krincek?

15 MS. KRINCEK: Thank you.

16 BY MS. KRINCEK:

17 Q. Mr. Randazza, I'm going to move on to a
18 new topic, which is the TNAFlix matter that you
19 handled on behalf of the company, Liberty Media.

20 A. Okay.

21 Q. In September of 2010, you filed a lawsuit
22 on behalf of Liberty Media Holdings against
23 TNAFlix.com, correct? Does that sound right?

24 A. I can't tell you the exact date, but that
25 sounds right.

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1 Q. The suit alleged copyright infringement,
2 correct?

3 A. Correct.

4 Q. Liberty Media was the plaintiff, correct?

5 A. Correct.

6 Q. TNAFlix.com was represented by an
7 attorney named Val Gurvits that you referenced
8 yesterday during your testimony, correct?

9 A. Yes. I think it was also represented by
10 Oleg Cross, and I believe Evan Fray-Witzer.

11 Q. TNAFlix was owned by an entity known as
12 Youngtek Solutions, correct?

13 A. Yes.

14 Q. Can I have you turn to Exhibit 350?

15 A. Yes. Wait. Maybe not. Sorry. I got
16 the wrong volume.

17 Q. It is the very last one.

18 A. I'm there.

19 Q. This Exhibit 350 is an e-mail exchange
20 that you had with Val Gurvits and it looks like
21 other people were copied on December 7th of 2010
22 related to the TNAFlix matter, correct?

23 A. Correct.

24 Q. And in the bottom e-mail, which is from
25 Mr. Gurvits to you, Mr. Gurvits says, Dear Marc, I

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1 did discuss your settlement offer with my client.

2 Do you see that?

3 A. Yep.

4 Q. So it appears you had made a settlement
5 offer on behalf of Liberty Media; is that correct?

6 A. Correct.

7 Q. And Mr. Gurvits goes on to say, Youngtek
8 does not want to settle and is prepared to go to
9 trial, because -- and he listed two reasons. And
10 Reason B is, There is no way to prevent others
11 from suing once this action is settled.

12 Do you see that?

13 A. I do.

14 Q. In the top part of Exhibit 350 is your
15 e-mail response to Mr. Gurvits, correct?

16 A. Correct.

17 Q. And in the last paragraph you respond to
18 Point B of Mr. Gurvits' e-mail, and you say, As
19 far as B goes, I actually could largely prevent
20 other plaintiffs from entering the fray -- not all
21 possible plaintiffs, but a large portion of the
22 adult entertainment industry could have been held
23 back.

24 Do you see that?

25 A. Yes.

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1 Q. By this, Mr. Randazza, you mean you could
2 prevent others from suing TNAFlix, correct?

3 A. I wished for Val to believe that, yes.

4 Q. Can I have you now turn to Exhibit 351,
5 which is going to be in the second volume.

6 A. Okay. Exhibit list?

7 Q. Exhibit 351.

8 A. Oh, okay. I have it, yes.

9 ARBITRATOR HABERFELD: Do I have 351?

10 MR. THOMAS: I think it may be underneath
11 some of these other ones.

12 ARBITRATOR HABERFELD: Will we be coming
13 back to Mr. Randazza's deposition any time soon?

14 MS. KRINCEK: I hope not, but --

15 ARBITRATOR HABERFELD: Okay. So let's
16 put that back. Thank you.

17 I've got 351.

18 BY MS. KRINCEK:

19 Q. This is an e-mail communication from you
20 to Mr. Gurvits on the TNAFlix matter from
21 December 16th, 2010, correct?

22 A. Correct.

23 Q. And you are making a settlement proposal
24 to TNA for a monetary amount of \$125,000, correct?

25 A. Correct.

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1 Q. Can you turn to the next exhibit,
2 Exhibit 352?

3 A. I'm there.

4 Q. And this is an e-mail from yourself to
5 Mr. Gurvits, again, regarding the TNAFLIX matter?

6 A. Yes, I see it.

7 Q. You say at the beginning, Val, thanks for
8 the call today.

9 So it appears Val called and made a
10 counteroffer; is that a fair assumption?

11 A. From looking at this, yes.

12 Q. And then in the next line you say,
13 Counter-counteroffer.

14 So you are making a counter to Val's
15 counteroffer, correct?

16 A. Yes.

17 Q. And your counteroffer is for a monetary
18 amount of \$50,000, correct?

19 A. Correct.

20 Q. And you have some nonmonetary demands set
21 forth in the paragraph numbered 2, correct?

22 A. Yes. What I want is them to be
23 proactive.

24 Q. And then in the next paragraph following
25 the one numbered 2, can I have you read that next

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1 paragraph, As far as?

2 A. As far as conflicting me out of future
3 cases, that will require significantly more than
4 \$5,000. In fact, I have someone waiting in the
5 wings with a \$50,000 retainer right now.

6 Q. So it appears Val had made an offer to
7 conflict you out of future TNA cases for \$5,000,
8 and you told him it will require significantly
9 more than \$5,000, correct?

10 A. Yep, that's how every negotiation with
11 Val usually went.

12 Q. Now, in the next paragraph you say,
13 Naturally, I'm in a strange ethical bind, as your
14 offer to conflict me out of future cases against
15 your client is something that would benefit my
16 current client. Accordingly, I would be willing
17 to be conflicted out of cases against TNA, but
18 that 5K figure has to come up, correct?

19 A. Correct.

20 Q. Did you ever receive written consent from
21 Liberty to negotiate for a monetary payment to
22 yourself in connection with the TNA dispute?

23 A. No.

24 Q. Can you turn to the next exhibit,
25 Exhibit 353?

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1 A. Okay. Yes, I see it.

2 Q. And this is further e-mail communication
3 between yourself and Mr. Gurvits related to the
4 TNAFlix matter, correct?

5 A. Yes.

6 Q. Can you read your e-mail from Mr. Gurvits
7 into the record?

8 A. I have a strange development in the TNA
9 matter. It is actually tangential to it. Another
10 client of mine asked me if I knew anyone at TNA,
11 because they want to purchase the site. I think
12 they are talking about mid seven figures.

13 This puts me in a weird position, I
14 think. But, I believe that if TNA is interested
15 in such discussions, that I can orchestrate an
16 ethical way for us to manage that. May as well
17 ask them if they would have an interest. If so,
18 you and I can figure out how to ethically work on
19 such a transaction. I'd imagine that you
20 personally could earn a shitload more money for a
21 broker fee than you'd earn litigating this case,
22 and me, as well.

23 Q. You do not have any specific recollection
24 of informing Liberty, either orally or in writing,
25 that you were going to propose acting as a broker

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1 on that potential transaction, the sale of
2 TNAFlix, correct?

3 A. I have no record of that.

4 Q. And you are not aware of any --

5 ARBITRATOR HABERFELD: What's the
6 question? Read the question again, Ms. Reporter.

7 (Whereupon, the pertinent part of the record
8 was read back by the court reporter.)

9 ARBITRATOR HABERFELD: Do you have a
10 recollection of that, Mr. Randazza?

11 THE WITNESS: I don't have any specific
12 recollection of that.

13 BY MS. KRINCEK:

14 Q. And you are not aware of any writings
15 where you disclosed to Liberty that you were going
16 to make an overture to Mr. Gurvits about a client
17 of yours being interested in purchasing TNAFlix,
18 correct?

19 A. No.

20 Q. And you don't have a recollection of
21 orally informing Liberty that you were going to
22 make an overture to Mr. Gurvits about you having a
23 client interested in purchasing TNAFlix, correct?

24 A. Correct.

25 Q. Now, the statement that you had another

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1 client interested in purchasing TNAFlix that you
2 made to Mr. Gurvits in this e-mail communication,
3 you've testified that that was not a true
4 statement, correct?

5 A. No, I never had a buyer.

6 Q. Is it your testimony that
7 misrepresentation about having an interested buyer
8 was part of your negotiation strategy?

9 A. With Val, yes.

10 Q. I'm going to have you turn to
11 Exhibit 354.

12 A. Yeah.

13 Q. This is additional e-mail communication
14 that you and Mr. Gurvits had on December 30th, so
15 you can see the bottom portion of the e-mail on
16 Exhibit 354 is the one that we just looked at as
17 353.

18 Do you see that?

19 A. Yes.

20 Q. And Mr. Gurvits e-mailed you back and
21 said, That is an interesting development. I will
22 e-mail my client, correct?

23 A. Yes.

24 Q. And you respond to Mr. Gurvits that same
25 day, and you say, Bizarre to say the least. Happy

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1 New Year to you, too. Here's how I think we can
2 do it -- and I think I have more ethical pitfalls
3 than you. I'd have to reveal to Liberty that this
4 was going on, and I think that a settlement with
5 CF would have to be part of the deal. But, I
6 think that we could do it so that the settlement
7 would be paid only after the sale so that there
8 was no suspicion on Youngtek's part that this was
9 any sleight of hand on my part to just get Liberty
10 a settlement, correct?

11 A. Yep.

12 Q. You're proposing the settlement and sale
13 of TNAFlix be tied together, correct?

14 A. As one possible outcome, yes.

15 Q. Can I have you turn to Exhibit 356?

16 A. Okay.

17 Q. I'm going to have you turn to Page 3 of
18 that e-mail communication. It's Bates stamped,
19 for the record, EMC1362?

20 A. I'm there.

21 Q. Now, we just looked at the December 22nd
22 e-mail exchange between you and Mr. Gurvits where
23 you told -- or, I'm sorry. We didn't just look
24 at, but earlier we looked at the December 22nd
25 e-mail exchange where you told Mr. Gurvits it was

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1 going to require significantly more than the
2 \$5,000 to conflict you out of future cases, and
3 that was Exhibit 352.

4 Do you recall that?

5 A. Uh-huh.

6 Q. And we just looked at Exhibit 356, around
7 January 11th of 2011.

8 I'm sorry. Let me have you, instead, go
9 to about two-thirds of the way down on EMC1362.
10 On January 11th, 2011, Mr. Gurvits e-mails you,
11 and says, By the way, there seems to be a lot of
12 interest on my client's side to sell.

13 How do we explore this possibility?

14 A. Yes.

15 Q. And then you responded, and you said,
16 Name price. Lawyers split a 15 percent broker
17 fee. I'll call potential buyer?

18 A. Yep.

19 Q. And then Mr. Gurvits responds to your
20 e-mail and says, I will ask, but without having
21 some indication of what the buyer is thinking, I
22 suspect the asking price will be a gazillion
23 dollars. You mentioned mid seven digits. Do you
24 think the buyer will pay 5MM.

25 Does that mean \$5 million?

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1 A. That's how I understood it.

2 Q. And then you respond to Mr. Gurvits and
3 say, I can ask, if that's a real number. If I ask
4 the seller and TNA comes back saying six mil, the
5 buyer will tell me to screw off, correct?

6 A. Correct.

7 Q. And then Mr. Gurvits responds and says,
8 Okay. I will ask TNA. I am sure they will want
9 to start high. Doesn't everyone? Will let you
10 know. 7.5 percent of anything in that ballpark is
11 just fine with me.

12 A. Uh-huh.

13 Q. And then you respond to him, and you say,
14 Of course it is. And I presume that your client
15 doesn't mind paying out 15 percent to us to put
16 the deal together. And to make the deal go
17 smoothly, we are going to need to kill off the
18 case.

19 Do you see that?

20 A. Yep.

21 Q. And that's referring to the TNAFlix and
22 Liberty Media dispute, correct?

23 A. Uh-huh.

24 MR. WHITE: Your Honor, may I
25 respectfully ask my client to say yes and no,

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1 instead of uh-huh.

2 THE WITNESS: Sorry.

3 ARBITRATOR HABERFELD: Done.

4 BY MS. KRINCEK:

5 Q. Can I have you turn -- if I could just
6 have a moment. I misnumbered an exhibit that I
7 need to find.

8 Can I have you turn to Exhibit 356?

9 A. Okay. I'm there.

10 Q. And now I want to go to the first page of
11 356.

12 A. Okay.

13 Q. Near the bottom, at 7:29 p.m., Val
14 Gurvits e-mailed you and said, I don't want to
15 muddy the waters with a possible sale. If the
16 case can be settled, we should settle it without
17 reference to the sale.

18 Do you see that?

19 A. Yes.

20 Q. So Val was telling you that the two
21 things shouldn't be tied together, the settlement
22 and the potential sale of TNAFlix, correct?

23 A. Yep, yes.

24 Q. And then he also communicates to you in
25 this e-mail that TNAFlix is not going to go above

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1 50,000?

2 A. Correct.

3 Q. And the top portion of this e-mail is

4 your response to Mr. Gurvits that same day,

5 January 11th, 2011, correct?

6 A. Correct.

7 Q. And you respond with a four-pronged

8 settlement proposal --

9 A. Uh-huh.

10 Q. -- correct?

11 A. Yes, I did.

12 Q. And you lay out Numbers 1 through 4, and

13 then you say, Keeping me completely out of the TNA

14 game is a little more complicated.

15 Can you read the following paragraph?

16 A. If your client wants me -- wants to keep
17 me personally out of the TNA game, then I think
18 there needs to be a little gravy for me. And it
19 has to be more than the \$5,000 we were talking
20 about before. I'm looking at the cost of at least
21 a new Carrera in retainer deposits after
22 circulating around the adult entertainment expo
23 this week. I'm going to want at least used BMW
24 money.

25 Q. And then you say, In order to conflict me

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1 out of future matters, you suggest this, and then
2 you make a proposal where Val's firm retains you
3 of counsel, you get paid \$5,000 per month for six
4 months paid to you from Val, and then you presume
5 that TNAFlix will reimburse you, correct?

6 A. Yes.

7 Q. Was it your position that this
8 communication was just more settlement negotiation
9 strategy on your part?

10 A. It was feeling Val out to see just how
11 much he was lying to me.

12 Q. Can I have you turn to Exhibit 372?

13 A. Yep.

14 ARBITRATOR HABERFELD: Number again,
15 please?

16 MS. KRINCEK: 372.

17 ARBITRATOR HABERFELD: Thank you.

18 BY MS. KRINCEK:

19 Q. Exhibit 372, Mr. Randazza, is the
20 response that was submitted to the Florida Bar
21 dated June 13th, 2013, correct?

22 A. Correct.

23 Q. And that was submitted on your behalf in
24 response to a Bar complaint that was filed by
25 Excelsior Media, correct?

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1 A. That is correct.

2 Q. Would it surprise you to learn that
3 Excelsior did not produce -- had not produced in
4 discovery in this matter the TNAFlix e-mails
5 between you and Mr. Gurvits we just went through
6 prior to the date of this response?

7 MR. WHITE: I'm sorry. Can I ask that
8 question to be read back?

9 MS. KRINCEK: It was messy. Let me reask
10 it.

11 BY MS. KRINCEK:

12 Q. Would it surprise you, Marc, to know that
13 Excelsior had not produced in discovery these
14 e-mails that we just looked at between yourself
15 and Mr. Gurvits in the TNA matter, you didn't have
16 that production from us when this Bar response was
17 sent?

18 A. I don't understand. I didn't have those
19 e-mails before this was sent?

20 Q. Correct. We didn't produce them to you
21 as of June. They were produced in July of 2013.

22 Do you have any reason to dispute that?

23 A. I have no record of -- in front of me of
24 when I -- when you produced them, but they were
25 from my account.

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1 Q. Can I have you turn to Page 2?

2 A. I'm there.

3 Q. The last complete paragraph on that page,
4 this relates to the TNAFlix matter, it starts off,
5 In Randazza's first interaction.

6 Can you read that paragraph that you
7 reported to the Florida State Bar?

8 A. In Randazza's first interaction with this
9 attorney, Val Gurvits, Gurvits offered Randazza
10 similar payment. Randazza informed Gibson that
11 Gurvits had offered Randazza that payment, and
12 Gibson asked what it meant. Randazza explained to
13 him essentially that he wanted to bribe Randazza
14 to never sue his client again. This is in a case
15 against TNAFlix.com. Gibson actually encouraged
16 Randazza to take it if this would facilitate the
17 settlement with TNAFlix. However, Randazza
18 explained to both Mr. Gurvits and Gibson that
19 Randazza would not accept payment in exchange for
20 a limitation on who he could represent, nor
21 represent in the future. No payment in the
22 TNAFlix was made to Randazza.

23 Q. So I'm interested, in particular, in the
24 second to last sentence, However, Mr. -- However,
25 Randazza explained to both Mr. Gurvits and Gibson

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1 that Randazza would not accept payment in exchange
2 for a limitation on who Randazza could represent
3 or not represent in the future.

4 A. Yes.

5 Q. Now, when Mr. Gurvits made the \$5,000
6 overture to you to conflict you out of TNAFLix
7 cases, you responded by telling him it was going
8 to take significantly more than that.

9 We looked at that e-mail, right?

10 A. Right.

11 Q. And then after that, you told him it was
12 going to -- there was going to have to be some
13 gravy in it for you, and after shopping around the
14 industry event, that you were looking at used BMW
15 money, correct?

16 A. Correct.

17 Q. Yet here you represent to the Bar that
18 when Mr. Gurvits approached you with the bribe,
19 you explained to Mr. Gurvits that you would not
20 accept a payment in exchange for a limitation?

21 A. Yes. I have e-mails with him to that
22 effect.

23 Q. That e-mail occurred later, correct?

24 A. I don't recall the exact sequence.

25 Q. Okay.

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1 ARBITRATOR HABERFELD: Is that e-mail in
2 evidence?

3 MS. KRINCEK: It will be now.

4 BY MS. KRINCEK:

5 Q. Exhibit 357.

6 A. Okay. I'm there.

7 Q. Exhibit 357, Mr. Randazza, is an e-mail
8 exchange between you and Val on January 12th of
9 2011, correct?

10 A. Yes.

11 Q. And so the prior e-mail that we looked
12 at, Exhibit 356, about the used BMW money was from
13 January 11th. This one is the following day on
14 January 12th.

15 You tell Mr. Gurvits you did a little
16 research, and you are sorry, but you can't see in
17 light of this research how you could ethically
18 enter into an agreement to limit my practice,
19 correct?

20 A. Correct.

21 Q. And then you even attached a link to, and
22 it looks like an ABA article on the topic there,
23 correct?

24 A. Yes.

25 Q. And then near the bottom, you say, Here's

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1 how I think it needs to go down: 1, We settle
2 with CF; 2, They can find a way, and you
3 asterisked this word "afterward" to engage me.

4 Do you see that?

5 A. Yes.

6 Q. And then in the top, it doesn't look like
7 Mr. Gurvits has any intervening response, but you
8 e-mail him again, and say, Here is more research
9 on it, and you attach a link to, it appears,
10 another article, which I believe we have attached,
11 correct?

12 A. Yes.

13 Q. And you reiterate here, you said, Like I
14 said below, if TNA wants to hire me, in asterisks,
15 after the settlement on terms that we discuss, in
16 asterisks, after settlement, then my phone line
17 will be open. However, it seems that if we place
18 any part of a, quote, buyoff as a condition of
19 settlement, then all four of us could wind up in
20 Bar trouble. I'm certainly not risking it,
21 correct?

22 A. Correct.

23 Q. Could I have you turn to Exhibit 358?

24 A. Okay.

25 Q. And let's start on the second page, which

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1 is EMC1401.

2 A. Okay.

3 Q. Mr. Gurvits is responding on
4 January 20th, 2011 to the four-pronged settlement
5 offer that you made on behalf of Liberty Media
6 previously, correct?

7 A. Yes. You mean at the very bottom,
8 10:32 a.m.?

9 Q. Correct.

10 A. Okay.

11 MR. WHITE: I'm sorry. May I ask what
12 Bates stamp you are looking at?

13 THE WITNESS: EMC001401.

14 BY MR. WHITE:

15 Q. Mr. Gurvits tells you that TNAFlix will
16 pay \$50,000 to Liberty?

17 A. Yes.

18 Q. And then you respond to Val, and you
19 explain something about the position of his
20 directors in your follow-up e-mail to him, and
21 appears to me that you are -- in your response,
22 you are trying to position Liberty to get more
23 than \$50,000, correct?

24 A. That's what the e-mails look like.

25 Q. And if you turn to the first page,

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1 EMC1400, of Exhibit 358, at the bottom, Val
2 Gurvits responds to you, and part of what he says
3 is, As I said before, 50,000 was acceptable before
4 Xmas, and if it was acceptable on January 11th,
5 then it should be acceptable now. If the deal is
6 off, I can only say thanks on behalf of my
7 college-bound kids.

8 Do you see that?

9 A. I do.

10 Q. And then you respond to him, and you say,
11 They will go to a way better college if we can
12 broker a sale, correct?

13 A. Correct.

14 Q. And Mr. Gurvits says, Agreed, but I am
15 concerned about ethical issues that arise if these
16 two things are connected, so let's finish this
17 case one way or another and then move onto the
18 sales, correct?

19 A. Uh-huh, yes.

20 Q. And then you respond, and you say, Of
21 course they can't be connected, but I wouldn't be
22 so cavalier about saying 50,000, take it or leave
23 it, with that plane flying around.

24 Do you see that?

25 A. I do.

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1 Q. And that plane flying around is the
2 prospect of earning a 7.5 percent broker fee on a
3 potentially \$5 million sale of TNAFlix?

4 A. That's what I'm trying to infer to Val,
5 yes.

6 Q. That's a pretty strong incentive for Val
7 to try and get the case settled, a prospect of
8 earning a broker fee on the sale, that's why you
9 are using it, correct?

10 A. I'm trying to get Val to get that number
11 up between -- from 50 to \$70,000. Although I do
12 recall at the time, I had been told to settle this
13 case for 40 -- 40 or \$45,000.

14 Q. Can you turn to Exhibit 359?

15 A. Okay. I'm there.

16 Q. On January 26th, there's an e-mail from
17 Val to yourself, and he says, Marc, Attached is
18 the draft of the settlement agreement and the
19 joint motion to dismiss.

20 Do you see that?

21 A. I do see it.

22 Q. So Val forwarded to you a draft
23 settlement agreement on the TNAFlix/Liberty Media
24 dispute, correct?

25 A. Correct.

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1 Q. Now, it's your position in this
2 arbitration that your proposal to Val to be paid
3 \$30,000 to not sue TNAFlix in the future wasn't a
4 sincere proposal, but a negotiation strategy,
5 correct?

6 A. I never -- yes, I never expected it to go
7 through, and it didn't.

8 Q. And you never expected to broker the sale
9 of TNAFlix and make a seven and a half percent
10 commission; that's negotiation strategy, also,
11 correct?

12 A. Well, I did think there was an outside
13 chance it could happen, and, frankly, if it had
14 happened, I think you might have seen in one of
15 the earlier e-mails, that would have caused the
16 settlement amount to elevate to \$100,000.

17 But my real belief was it wasn't going to
18 happen.

19 Q. If the true goal of these negotiation
20 strategies was to get Liberty more settlement
21 money, and you're only pretending you're
22 interested in brokering the sale and being
23 conflicted out of TNAFlix, why even insert
24 yourself into the deal at all? For example, the
25 broker deal, why not just tell Val he can take the

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1 whole 15 percent broker commission on the deal to
2 give him more incentive to resolve the case?

3 A. Because when you play chess with Val, you
4 need to know how to play chess with Val.

5 Q. So you don't think it would have been a
6 more effective strategy had you put more, quote,
7 gravy out there for him?

8 A. I don't think Val would have believed it,
9 and, you know, I'm not going to say that I didn't
10 think there was hypothetically the possibility
11 that this could happen, but I don't think it
12 raised beyond hypothetical.

13 Q. So Val sends you the draft settlement
14 agreement on January 26th of 2011, correct?

15 A. That looks like it, yes.

16 Q. And if you turn to the next exhibit,
17 Exhibit 360.

18 A. Yes.

19 Q. On February 1st of 2011, you send to Val,
20 the subject matter of this e-mail is Signed Sealed
21 Delivered.

22 Do you see that?

23 A. I do.

24 Q. You send back to Val the settlement
25 agreement signed on behalf of Liberty Media,

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1 correct?

2 A. Yes, I do.

3 Q. And the settlement provides for \$50,000
4 to be paid to Liberty?

5 A. Yes.

6 Q. Correct?

7 A. Yes.

8 Q. So the settlement negotiations are over,
9 you've got a deal on TNAFlix at this point, right?

10 A. Yes.

11 Q. Can you turn to Exhibit 361?

12 A. I'm there.

13 Q. This is an e-mail exchange between
14 yourself and Val Gurvits, correct?

15 A. Correct.

16 Q. And it's on February 2nd, 2011, so after
17 the settlement agreement has been signed by
18 Liberty, correct?

19 A. Correct.

20 Q. And the bottom e-mail, the first one on
21 this e-mail exchange between you and Val,
22 February 2nd, it appears an evening e-mail to Val,
23 Subject, TNA.

24 And what did you say to him?

25 A. Are you saying on 361?

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1 Q. 361.

2 A. Yeah. And you're working on a broker
3 agreement that reflects you and me as the brokers
4 for sale, 15 percent commission split, seven and a
5 half for each of us.

6 Q. Your first e-mail that day was down at
7 the bottom. So how should we proceed? Do they
8 want a retainer letter from me? Correct?

9 A. Correct.

10 Q. And Val responded, he said, I think so.
11 I will e-mail them and confirm, correct?

12 A. Correct.

13 Q. And then you said to Val, Okay, and we're
14 working on a broker agreement that reflects you
15 and me as the broker for sale, 15 percent
16 commission split 7.5 percent for each of us,
17 correct?

18 A. Correct.

19 Q. So you are coordinating with Mr. Gurvits
20 how to finalize your hypothetical overtures to
21 serve as broker and to take payment to be
22 conflicted out, correct?

23 A. Not to be conflicted out, to -- if this
24 had happened, which I still thought, like I said,
25 was hypothetical, it would have to be formalized.

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1 Q. And the next exhibit, Mr. Randazza, 362.

2 A. Yes.

3 Q. That's an e-mail from February 11th from
4 you to Mr. Gurvits. Exhibit 362.

5 And you say, Val, can you get this
6 executed, correct?

7 A. Yes.

8 Q. And attached is a Legal Services Fee
9 Agreement between your law firm, Randazza Legal
10 Group, and Youngtek Solutions that your -- that
11 you've drafted and are providing to Mr. Gurvits to
12 try to get Youngtek, which is TNAFLIX, to sign,
13 correct?

14 A. Yes.

15 Q. And in Section 2, Scope of Services, you
16 wrote, Client hires attorneys to represent client
17 with respect to telephonic legal, intellectual
18 property, and business advice rendered to client.

19 Do you see that?

20 A. Yes.

21 Q. And a little bit further down, you say,
22 And sale of client's company and/or Internet
23 properties --

24 A. Yes.

25 Q. -- correct?

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1 And then in Section 4, which is titled

2 Legal Fees --

3 A. Yes.

4 Q. -- your agreement provides for telephonic

5 legal advice for a term of one year, correct?

6 A. Correct.

7 Q. And you say this representation shall be

8 paid by an initial retainer of \$36,000, which the

9 parties agree is earned upon receipt, correct?

10 A. Yes.

11 Q. And then further down, there is a section

12 that's entitled Sale of Assets.

13 Do you see that?

14 A. I do.

15 Q. And in this provision, TNAFlix or

16 Youngtek would be agreeing that yourself and

17 Boston Legal Group have the exclusive right to

18 sell Youngtek Solutions and any of its online

19 assets, including TNAFlix, EMPFlix, and/or any

20 other online properties owned by the client for

21 one year, correct?

22 A. Correct.

23 Q. And under this deal, it says, This sale

24 shall entitle Randazza Legal and Boston Law to ten

25 percent of the sale price.

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1 Do you see that?

2 A. I do.

3 Q. So somehow along the way, it's gone from
4 a potential 15 percent broker commission to a ten
5 percent broker commission, correct?

6 A. Yes.

7 Q. And instead of getting \$30,000 paid,
8 \$6,000 -- 5,000 -- excuse me -- \$5,000 a month for
9 six months, you are now getting \$36,000, correct?

10 A. Yes.

11 Q. I don't, Mr. Randazza, see any provision
12 in here that's a carve out that would allow you to
13 represent Liberty Media if they had any disputes
14 with TNAFlix in the future, do you?

15 A. No, I do not.

16 Q. Can you turn to Exhibit 363?

17 A. Okay. I'm there.

18 Q. Now, this is building on the last e-mail
19 that we looked at where you had forwarded to Val
20 the retainer agreement, the broker agreement for
21 TNAFlix on February 11th?

22 A. Yes.

23 Q. Later in this afternoon, Val responds,
24 and he says, I forwarded to my client. Will let
25 you know what they say.

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1 Do you see that?

2 A. Yes.

3 Q. And you respond to Val, and you say,
4 Please prevail upon them that time is of the
5 essence.

6 Do you see this?

7 A. I do.

8 Q. Time is of the essence with respect to
9 this hypothetical sale of TNAFlix where you don't
10 really have a client that's interested in buying
11 them --

12 A. Yes.

13 Q. -- correct?

14 Okay. Can you turn to the next exhibit,
15 364?

16 A. Yes.

17 Q. This is an e-mail from you to Mr. Gurvits
18 on February 15th, 2011, where you forwarded a
19 broker agreement to Mr. Gurvits, correct?

20 A. I see it, yeah.

21 Q. So there is no longer a piece to this
22 where you are going to be retained by counsel for
23 Oron, this is purely on the broker end of things,
24 correct?

25 A. I believe you misspoke when you said

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1 Oron.

2 Q. I'm sorry. TNAFlix.

3 A. Correct.

4 Q. And did you draft this agreement,
5 Mr. Randazza?

6 A. I don't recall if I was the author of it.

7 Q. So you forwarded to -- you did forward it
8 to Mr. Gurvits?

9 A. It looks that way, yes.

10 Q. Under recitals, it says, Whereas, RLG has
11 indicated that it is aware of certain prospective
12 buyers who may be interested in purchasing the
13 assets or stock of the company, correct?

14 A. Yes.

15 Q. And then do you see under the Commission
16 section, Number 2, is providing for you and
17 Mr. Gurvits to split a ten percent commission on
18 the sale of Youngtek, correct?

19 A. I do.

20 Q. This is a lot of work you are going
21 through just to thwart your allusive being a
22 broker and taking a bribe, when the settlement of
23 TNAFlix has already been accomplished; don't you
24 think?

25 A. Doesn't look like a lot of work to me.

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1 Most of this is standard. Just find and replace.

2 Q. You, Mr. Randazza, failed the multistate
3 profession responsibility examination in Nevada
4 the first time you took it, correct?

5 A. I did.

6 Q. A settlement with Liberty Media got
7 executed, but your side deals benefiting yourself
8 to be retained by TNAFlix and to become a broker
9 for them, they never get finalized, right?

10 A. Correct.

11 Q. And you received a 25 percent bonus on
12 the \$50,000 settlement reached with TNAFlix from
13 Liberty Media, correct?

14 A. I did.

15 Q. And you received your salary during the
16 entire time you were working on the TNAFlix
17 dispute for Liberty Media, including the time you
18 were spending trying to finalize your side deals
19 with them for yourself, correct?

20 A. If -- I may have spent time while there,
21 yes.

22 Q. Maybe it would have worked out better for
23 you if you were able to get your retainer
24 agreement signed before the settlement agreement
25 was signed, then you would have been assured that

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1 you would be retained by TNAFlix and be paid that
2 money; don't you think?

3 ARBITRATOR HABERFELD: Let me hear back
4 the question. Read it back, please, Ms. Reporter.

5 (Whereupon, a recess was taken.)

6 ARBITRATOR HABERFELD: Do you know the
7 question?

8 THE WITNESS: Not at all.

9 BY MS. KRINCEK:

10 Q. Do you need her to reread it again?

11 A. No. I don't understand the question.

12 Q. So the way it worked out with TNAFlix,
13 you didn't send your retainer agreement for the
14 \$36,000 payment until after the settlement
15 agreement with Liberty and TNAFlix was signed off,
16 correct?

17 A. I don't remember the chronology, but I
18 think that's true.

19 Q. Do you think you would have had a better
20 chance of getting your retainer agreement signed
21 off if you had sent it before you sent the
22 settlement agreement?

23 A. No.

24 Q. I'm just going to move on to a different
25 topic briefly, and that's the Megaupload matter.

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1 And for this, I just wanted to ask you a couple
2 questions about an exhibit that Mr. White looked
3 at with you, Exhibit 53, in Complainant's.

4 A. Okay. Okay. I'm there.

5 Q. Exhibit 53. And I'm going to be
6 referring specifically to the page that's Bates
7 stamped -- looks like there's a typo in the Bates
8 stamping, but it's ECM3461.

9 A. Okay. I'm there.

10 Q. And do you recall, Mr. Randazza, that the
11 Megaupload dispute that you handled on behalf of
12 Liberty Media happened in between the TNAFlix
13 matters and the Oron matters?

14 A. Yes.

15 Q. So on the page that's Bates stamped 3461,
16 and this is part of an e-mail communication from
17 you to the attorney for Megaupload on August 22nd,
18 2011, third paragraph down, you say, I recognize
19 that one of your client's goals is to take me out
20 of future games. Judge Lynch communicated that,
21 and you have, as well.

22 Do you see that?

23 A. Yes.

24 Q. Then you tell Mr. Rothken, In order to
25 address any of your clients' concerns about future

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1 suits, I am blocking off some time on
2 September 5th, 2011, which should be sufficiently
3 beyond the wire date for my client to consider the
4 matter closed. I will make myself available for
5 an hour any time between 8:00 a.m. and 6:00 p.m.
6 PDT to have a conversation with your client about
7 assisting them in putting some protections in
8 place to counter future attacks from other
9 companies.

10 I think that I have some good ideas,
11 which would prove useful to them, and which may
12 act as a prophylactic, if implemented, from future
13 infringement suits. Naturally, to share those
14 ideas, I will need Mega to share some confidential
15 information with me. And I believe that
16 possession of that information in that context
17 will place me in a position of not being able to
18 represent other companies against them, as the
19 receipt of that confidential information in the
20 course of representation would make it unethical
21 for me to later represent another party against
22 them.

23 Do you see that?

24 A. Yes.

25 Q. After that paragraph, you say, However, I

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1 must make it clear that I cannot come to any
2 specific terms about that while there is still
3 unresolved business between Mega and Corbin,
4 correct?

5 A. I do.

6 Q. And at the bottom of ECM3461, you write
7 to Ira Rothken, However, the same ethics that do
8 not make it possible for me to cut corners on the
9 "conflict out" provision will be in place after
10 the agreement is signed. I did not get where I am
11 by having a reputation for being someone who would
12 stab others in the back. When we have our
13 conversation, your clients shall be given every
14 opportunity to discuss retaining me as one of
15 their attorneys. Once we come to an understanding
16 and an agreement on that front, your clients will
17 have gained both the immediate comfort of knowing
18 that I cannot -- that I not only cannot come after
19 them, but that I will be duty-bound to protect
20 them.

21 Do you see that?

22 A. I do.

23 Q. So you are telling Mr. Rothken that as an
24 ethical attorney, they have your word that you
25 will give them the opportunity to conflict you out

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1 after the settlement is finalized with Liberty,
2 fair?

3 A. Yeah, that I would speak with them, yes.

4 THE WITNESS: Can we take a brief break,
5 just five minutes?

6 ARBITRATOR HABERFELD: Are you --

7 MS. KRINCEK: That's fine. I was going
8 to move on to a different topic, so that's fine.

9 ARBITRATOR HABERFELD: Are you completed
10 with this segment?

11 MS. KRINCEK: I am.

12 ARBITRATOR HABERFELD: Let's take a short
13 break. Ten minutes.

14 (Whereupon, a recess was taken.)

15 ARBITRATOR HABERFELD: Back on the
16 record.

17 BY MS. KRINCEK:

18 Q. Mr. Randazza, the next topic that I
19 wanted to ask you questions about is related to
20 the settlement of the Oron dispute that you
21 handled on behalf of Liberty Media. So through
22 this arbitration proceeding, you are seeking a
23 25 percent contractual bonus based upon the
24 proceeds of a settlement that was entered with
25 Oron, correct?

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1 A. Correct.

2 Q. And you filed suit against Oron on behalf
3 of Liberty Media in 2012 alleging that Oron
4 infringed upon Liberty's copyrighted works,
5 correct?

6 A. That was the gist of it, yes.

7 Q. Stevan Lieberman represented Oron
8 initially, correct?

9 A. Yes.

10 Q. If you will turn to Exhibit 345.

11 A. Yes. I see it.

12 Q. You participated in settlement
13 negotiations with Mr. Lieberman that resulted in
14 Mr. Lieberman sending to you this document that's
15 Exhibit 345, correct?

16 A. Correct.

17 Q. And that Liberty authorized you to
18 execute the agreement on its behalf, correct?

19 A. Commanded me to.

20 Q. And you did so, and you returned the
21 executed document to Mr. Lieberman, correct?

22 A. I did.

23 Q. And Oron, under this agreement, was to
24 pay Liberty Media \$550,000, correct?

25 A. Correct.

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1 Q. And Section 2 of this agreement had you
2 subject to a personal penalty for early transfer
3 to anyone, including Liberty or Excelsior,
4 correct?

5 A. Yes.

6 Q. And part of the settlement terms included
7 Liberty's agreement to --

8 A. Wait, wait, wait. I'm sorry. Could you
9 repeat that question? I think I might have
10 answered it inaccurately.

11 Q. Sure. Section 2 had you subject to a
12 personal penalty for early transfer to anyone of
13 the money, including to Liberty or to Excelsior?

14 A. Okay. Yes.

15 Q. And part of the settlement terms included
16 Liberty's agreement to dissuade others from
17 bringing suit against Oron, correct?

18 A. Correct.

19 Q. That's in Paragraph 10.

20 A. Yes.

21 Q. Paragraph 12 of the agreement that you
22 executed on Liberty's behalf also has a provision
23 in there that Liberty is going to review actual --
24 is going to conduct a review of the actual files,
25 shows that there's -- sorry.

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1 Liberty agrees to announce publicly that
2 after a careful review of the facts they believe
3 Oron is protected by the DMCA safe harbor and that
4 a review of the actual files shows that there
5 never was any child porn on Oron's site.

6 That's one of the settlement terms?

7 A. That's one of the terms.

8 Q. And Paragraph 13, Liberty and Oron agree
9 that the parties will craft a joint letter for
10 publication stating that the parties are joining
11 together in the fight against child porn and
12 copyright infringement, correct?

13 A. Yes.

14 Q. Now, the child -- you testified earlier
15 that the child pornography issue was related to
16 Oron's defamation claim against PornGuardian,
17 correct?

18 A. I believe we raised it in the -- in the
19 statements of facts in our case against Oron.

20 Q. "Our case" meaning the case where you
21 were representing PornGuardian or the case where
22 you were representing Liberty Media?

23 A. No, there was never a case where I was
24 representing PornGuardian. I mean in the Liberty
25 Media case.

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1 Q. But you were representing PornGuardian in
2 its dispute with Oron, correct?

3 A. Yes. I don't believe I was at this
4 point.

5 Q. So what statement of facts on behalf of
6 Liberty Media referenced child pornography on
7 Oron?

8 A. I don't recall, but I do believe that
9 there was something in there that we had noted
10 that they didn't -- I often put in allegations
11 that these companies that were allegedly stealing
12 a lot of pornography were not adhering to 18 USC
13 Section 2257, which is the recordkeeping
14 requirement for adult entertainment productions,
15 and I think we used that as sort of a bit of
16 salacious narrative.

17 Q. Well, I'm not sure what that has to do
18 with a child pornography allegation by Liberty
19 Media, but --

20 A. Well, that's a child pornography
21 violation.

22 Q. Well, regardless, Oron had accused
23 PornGuardian of defamation, and part of that claim
24 entailed an allegation that PornGuardian was
25 accusing them of having child pornography on their

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1 site, correct?

2 A. That is my recollection, yes.

3 Q. Oron subsequently claimed that this was

4 not a binding settlement agreement, correct?

5 A. They did.

6 Q. And you filed a motion, and Judge Navarro
7 in Federal Court entered an Order finding the
8 agreement to be enforceable on August 7th of 2012,
9 correct?

10 A. Correct.

11 Q. And after that, you filed a motion for
12 attorney's fees against Oron on behalf of Liberty,
13 correct?

14 A. Correct.

15 Q. And Liberty was granted its attorney's
16 fees by Judge Navarro, correct?

17 A. Correct.

18 Q. And the amount of fees awarded was a
19 little over \$130,000 by Judge Navarro, correct?

20 A. Correct.

21 Q. Now, you did eventually receive the
22 \$550,000 settlement amount from Oron into your
23 trust account, correct?

24 A. I did.

25 Q. You did not, however, receive any

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1 attorney's fee award from Oron into your trust
2 account, correct?

3 A. No. By that point, they had -- by the
4 time the entitlement to it had been established, I
5 was terminated.

6 Q. And Oron advised you that it planned to
7 appeal Judge Navarro's ruling on the attorney's
8 fee award, correct?

9 A. I believe they did.

10 Q. Can I have you turn to Exhibit 377?

11 A. I'm there.

12 Q. Exhibit 377 is an e-mail from yourself to
13 Stevan Lieberman on August 7, 2012, correct?

14 A. Correct.

15 Q. And you communicated to Mr. Lieberman
16 that if Mr. Oron would like to wire us the
17 \$550,000 within 24 hours, we will withdraw our
18 motion for fees.

19 Do you see that?

20 A. I do.

21 Q. So it appears at the point of this
22 e-mail, you hadn't yet received Judge Navarro's
23 ruling awarding you attorney's fees, correct?

24 A. Correct. I think we had just filed it.

25 Q. And then in the last e-mail,

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1 Mr. Randazza, you say to Oron's counsel, And if
2 Oron would like someone to show them how not to
3 get sued in the future and would like to have some
4 more of my playbook, they are welcome to contact
5 me directly or through you. I make a much better
6 friend than enemy, correct?

7 A. Correct.

8 Q. Is this more settlement strategy that you
9 are engaging in with this statement?

10 A. It is.

11 Q. So you had no expectation that you would
12 actually be retained by Oron; is that correct?

13 A. I don't think it would be honest for me
14 to say that I didn't think there was a
15 hypothetical chance, as in every one of these
16 other ones that you've seen and ones you haven't
17 brought up, as well. Nevertheless, it was my
18 experience at that point that that didn't ever
19 happen.

20 Q. This is the first time in negotiations
21 with Oron over the litigation where the topic of
22 you assisting Oron was raised, correct?

23 A. No, that's not correct.

24 Q. Can you point me to any written
25 communications where counsel for Oron ever raised

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1 this issue earlier?

2 A. I cannot -- I cannot recall any, but
3 there may be some in the file, but I do recall
4 speaking with Lieberman about this.

5 Q. So you are not aware of any documentation
6 about communications prior to this initiated by
7 Oron about working with you, correct?

8 A. Sitting here right now, I cannot recall
9 any particular documents.

10 Q. Can you go to Exhibit 376?

11 A. Okay. Here we go. Okay.

12 Q. This is another e-mail from you to
13 Mr. Lieberman regarding the Oron matter on
14 August 7th, 2012, and you say, Stevan, Liberty
15 smells blood now.

16 Do you see that?

17 A. I do.

18 Q. Part of the way down you say, I suggest
19 that Oron makes an offer of something to cover the
20 fees expended in the fight since the motion to
21 enforce has been filed.

22 And when you are talking about to cover
23 the fees, you are talking about the attorney's
24 fees that Liberty has expended, correct?

25 A. Correct.

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1 Q. And in the bottom paragraph you say, Tell
2 Oron that they're going to have to extend an olive
3 branch. I don't give a shit how much it is. I
4 don't get paid more for it, correct?

5 A. Correct.

6 Q. I don't recall, Mr. Randazza, when you
7 listed your damages on direct examination, that
8 you mentioned a portion of the -- claiming a
9 portion of the attorney's fee award that was never
10 received.

11 A. Yes.

12 Q. Is that part of the damages you are
13 claiming in this matter?

14 A. It is.

15 Q. That's the part that here you are saying
16 you don't get paid more for it, correct?

17 A. That's what I'm telling Stevan.

18 Q. Well, you wouldn't lie to opposing
19 counsel, would you?

20 A. Yes, I would.

21 Q. Can you please turn to Exhibit 366?

22 A. I'm there.

23 Q. This is an e-mail that you sent to
24 Mr. Lieberman also on August 7th, 2012, correct?

25 A. Yes.

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1 Q. Okay.

2 A. At 8:43 p.m. yes.

3 Q. You say, I just got a call from our Hong
4 Kong counsel.

5 Do you see that?

6 A. I do.

7 Q. And that's referring to the Gall Law Firm
8 that you had retained to represent Liberty Media
9 in the Hong Kong proceedings, correct?

10 A. Correct.

11 Q. Number 1 you say, They spent 80K so far
12 in USD.

13 Does that mean US dollars?

14 A. That's what that means.

15 Q. Liberty is going to want a little more
16 than 25K to satisfy them on that. Do what you
17 can, correct?

18 A. Yes, correct.

19 Q. And in Paragraph 2, you're proposing that
20 Oron pay to Liberty \$650,000, correct?

21 A. Correct.

22 Q. And that the money be transferred from
23 Oron's HSBC account in Hong Kong to Liberty
24 Media's Hong Kong attorney's account, correct?

25 A. Correct.

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1 Q. And Paragraph 3 you say, Then whatever
2 you guys -- seems like a typo -- whatever you guy
3 pay me to retain me would come from your PayPal
4 account and would have no real relevance to that.

5 A. Yep.

6 Q. You say, I spoke to my partner, who was
7 adamant that we should earn 100K if we're to never
8 be able to sue FF Magnat, Bochenko, Novafile.com,
9 Oron.com, et cetera, forever and ever. I got him
10 to go with 75K. But, for that, we'll provide you
11 some really great value, including a jurisdiction
12 derailing plan that you'll drool over, correct?

13 A. That's what that says.

14 Q. And that's what you wrote to
15 Mr. Lieberman, Oron's counsel?

16 A. That's what I wrote to Mr. Lieberman,
17 yes.

18 Q. So you're proposing that whatever Oron is
19 going to hypothetically pay you should come out of
20 Stevan Lieberman's PayPal account, correct?

21 A. Yeah. I'm not only doing that there.

22 Q. Excuse me. I missed that.

23 A. I'm not -- that's not all that I'm
24 proposing there.

25 Q. The \$650,000 to Liberty under this plan

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1 would go to Liberty's Hong Kong counsel's trust
2 account, correct?

3 A. Correct.

4 Q. And the payment to you is going to
5 Mr. Lieberman's PayPal account, correct?

6 A. Well, it would come from his.

7 Q. From his -- okay.

8 The partner that you are referring to
9 that was insisting on \$100,000 and you are
10 representing you had to convince to agree to take
11 \$75,000, that is Ronald Green, correct?

12 A. Correct.

13 Q. And the discussion with Ron that you are
14 referencing there, your testimony is that
15 conversation actually occurred between you and
16 Mr. Green, correct?

17 A. I did think so during my deposition, yes.

18 Q. And after your deposition, Mr. Green was
19 deposed, he denied that that conversation ever
20 took place, correct?

21 A. That's what I heard.

22 Q. In any event, you conveyed to
23 Mr. Lieberman that you should be paid 75,000 if
24 you are to never be able to sue FF Magnat, Oron,
25 Bochenko, et cetera, forever and ever, correct?

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1 A. I was also trying to scare him with this.

2 Q. In the last sentence, Mr. Randazza, when
3 you reference a jurisdiction derailing plan, that
4 would make it more difficult for companies like
5 Liberty Media to obtain jurisdiction in the US
6 over Oron in the future, correct, that's what is
7 meant by a jurisdiction derailing plan?

8 A. That's what I'm proposing.

9 Q. You understood at the time of this e-mail
10 that it is unethical to negotiate as part of a
11 settlement to restrict your legal practice,
12 correct?

13 A. That was my understanding.

14 Q. So this e-mail, before we move on to the
15 next, was sent by you to Mr. Lieberman at
16 8:43 p.m.

17 Do you see that?

18 A. I do.

19 Q. Can you turn to the next exhibit,
20 Exhibit 367?

21 A. I'm there.

22 Q. So a few minutes after the last e-mail we
23 just looked at, you e-mail Mr. Lieberman, and you
24 say, Get this back to me ASAP. As soon as I get
25 it back, I'll start moving everything else around.

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1 Do you see that?

2 A. I do.

3 Q. And then you attach to Mr. Lieberman's
4 e-mail a retainer agreement between yourself and
5 Oron, correct?

6 A. Yes, yes.

7 Q. Now, on the TNAFlix matter, you never got
8 your retaining agreement signed after the
9 settlement agreement was finalized, correct?

10 A. Correct.

11 Q. So here you are sending out your
12 retaining agreement before you've gotten to the
13 point of having a settlement agreement about the
14 600 or \$650,000 drafted with Mr. Lieberman,
15 correct?

16 A. Yes. Direct your attention to
17 Paragraph C.

18 Q. But it's correct that you haven't gotten
19 to the point where you've exchanged settlement
20 agreements about the 600, \$650,000 that you've
21 been e-mailing about with Mr. Lieberman, correct?

22 A. No. We had a settlement already at this
23 point, as far as I was concerned.

24 Q. And now you are negotiating in the past
25 e-mails that we have looked at for more money to

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1 go to Liberty Media --

2 A. Yes.

3 Q. -- in light of the attorney's fees award?

4 A. Correct. I'm trying to get -- there
5 wasn't an -- I don't think there was an award yet,
6 but in light of the fact that I was seeking the
7 fees.

8 Q. Okay.

9 A. But, yes.

10 Q. So in this retainer agreement that you
11 send to Mr. Lieberman for Oron, under Number 1
12 you've got a few conditions down there, the first
13 one is that the client, meaning Oron, returns a
14 signed copy of the agreement to you, correct?

15 A. Correct.

16 Q. And then the second condition is that
17 Oron pays the initial retainer fee of \$75,000
18 called for under Paragraph 5, and it's retained in
19 your trust account, correct?

20 A. Yes.

21 Q. And then the third condition is that Oron
22 resolves all matters without limitation with
23 respect to Liberty Media Holdings, correct?

24 A. Correct.

25 Q. So you're tying the settlement of the

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1 Oron and Liberty dispute to your retainer
2 agreement, correct?

3 A. I'm dangling that in front of him to get
4 the money as quickly as I can.

5 Q. They're both referenced in the same
6 document. This document deals with you being
7 retained by Oron, and also Oron resolving its
8 dispute with Liberty as a condition of this
9 agreement being entered, correct?

10 A. They need to do that first, yes.

11 Q. Under Scope of Services --

12 A. Yes.

13 Q. -- around the middle of the paragraph,
14 you say, The initial retainer will give client
15 advice and counsel for a period of 30 days
16 immediately following the execution of this
17 agreement, correct?

18 A. Correct.

19 Q. So for 30 days' work, you are going to
20 earn \$75,000, correct?

21 A. If it ever happened.

22 Q. And on the next page, under Legal Fees,
23 Mr. Randazza --

24 A. I'm sorry. Can you specify what you mean
25 by "you"? You don't -- do you mean me

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1 individually or everybody at the firm?

2 Q. I think we understand what that means.

3 But if you can turn to the next page on
4 legal fees.

5 A. Okay.

6 Q. Subsection A, An initial retainer of
7 \$75,000, which the parties agree is nonrefundable
8 and earned upon receipt.

9 That was the nature of the financial
10 arrangements set forth in this agreement, you
11 fully earned the \$75,000 upon receipt, correct?

12 A. Yep.

13 Q. There is no provision that I see in this
14 agreement precluding a conflict from preventing
15 you from representing Liberty adverse to Oron in
16 the future, correct?

17 A. Correct.

18 Q. And you testified that your experience in
19 the industry is that it is common for opposing
20 counsel to offer money to conflict you out,
21 correct?

22 A. Yes.

23 Q. Do you suppose that could be because you
24 are willing to negotiate with them for that
25 arrangement?

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1 A. No, I don't suppose that.

2 Q. You never received permission from
3 Liberty to negotiate for this retainer from Oron,
4 correct?

5 A. I never discussed it with them
6 explicitly.

7 Q. You never received permission from them
8 to represent Oron, correct?

9 A. I don't think I did.

10 Q. Can you turn to Exhibit 372?

11 A. Okay. I'm there.

12 Q. And this, again, 372 is your Bar response
13 to the Florida State Bar.

14 A. Okay.

15 Q. If you can turn to the second page, which
16 for the record is EMC1606.

17 A. I'm there.

18 Q. The section that's labeled The \$75,000
19 Bribe.

20 Do you see that?

21 A. Yes.

22 Q. Can you please read the third and fourth
23 paragraph -- third and fourth paragraphs?

24 A. From July through August 2012, Liberty
25 and Oron litigated over whether the settlement

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1 agreement was actually a binding settlement
2 agreement. In early August, the court held that
3 the settlement agreement was valid and entered
4 judgment in Liberty's favor, which was collected
5 from Oron's PayPal account, and remains in
6 Randazza's trust account today.

7 Oron appealed this decision. As part of
8 a blanket resolution of the whole matter, Oron's
9 successor counsel suggested a payment that would
10 include \$75,000 for Randazza to not represent
11 others against the site. Randazza did not seek or
12 solicit this payment; it was offered by Oron's
13 counsel. In fact, this is a frequent issue in
14 litigation involving Liberty.

15 Q. You represented to the Bar that Oron
16 successor counsel suggested a payment that would
17 include 75,000 to you, correct?

18 A. Correct.

19 Q. But you were the one that told Oron's
20 counsel conflicting you out was going to require a
21 \$75,000 payment; isn't that correct?

22 A. I think that discussion started with
23 Stevan.

24 Q. That was your e-mail where you said your
25 partner was insisting on \$100,000, and you had to

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1 convince him to take \$75,000, correct?

2 A. That's right.

3 Q. So you came up with the \$75,000 figure?

4 A. I'm not sure, actually, who came up with
5 it first, but I do know that it was referenced in
6 that e-mail. But this was, what, three years ago?

7 Q. Well, actually, you wrote this in -- this
8 was written in 2013, correct?

9 A. I'm saying the conversation was at least
10 two years ago, three years ago.

11 Q. You had all the e-mails about your
12 communications, correct?

13 MR. WHITE: I'm sorry. Could I have that
14 question read?

15 (Whereupon, the pertinent part of the record
16 was read back by the court reporter.)

17 THE WITNESS: Actually, no. There are a
18 number of e-mails that are missing.

19 BY MS. KRINCEK:

20 Q. But you produced -- the e-mails that we
21 just looked at, you produced them in this
22 litigation after we produced them, you produced
23 copies of them?

24 A. Yes.

25 Q. The statements to the Bar that you did

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1 not seek or solicit the \$75,000 payment, that's
2 also not true, correct?

3 A. I did not initially seek or solicit
4 payment.

5 Q. But --

6 A. They are the ones that began the
7 discussion.

8 Q. But in that e-mail to Mr. Lieberman, you
9 are telling him you are going to require \$75,000
10 to never, ever, ever be able to sue Oron.com
11 again, correct?

12 A. That's inaccurate.

13 Q. What's inaccurate about it?

14 A. What that is actually stating is that I
15 would be selling a certain degree of knowledge to
16 him for it. It's not saying that I would do it in
17 order to be conflicted out. That would be the
18 practical effect of it. But if he wanted to buy
19 my knowledge, I was willing to sell it to him for
20 that much.

21 Q. But you are seeking the \$75,000 payment
22 in that e-mail, right?

23 A. I don't think that's an accurate way to
24 describe it.

25 Q. Let me have you look at Exhibit 405.

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1 A. Okay.

2 Q. This, Mr. Randazza, is an e-mail,

3 Exhibit 405, from Val Gurvits --

4 A. Yep.

5 Q. -- to you, and it's dated August 9th,

6 2012.

7 Do you see that?

8 A. Yes.

9 Q. So at this point it appears that Val
10 Gurvits takes over as primary counsel for Oron in
11 settlement negotiations, correct?

12 A. Well, he revealed himself, yes.

13 Q. He's now the primary person that you are
14 dealing with instead of Stevan Lieberman, right?

15 A. I'm pretty sure he was the whole time,
16 but, yes, that's who I'm talking to directly now.

17 Q. And Mr. Gurvits says, Here's my current
18 draft of the settlement agreement.

19 Do you see that?

20 A. Yep.

21 Q. And he actually attached a draft of the
22 settlement agreement to this e-mail, correct?

23 A. Yes, he did.

24 Q. Now, in this version of the settlement
25 agreement that Mr. Gurvits sent to you, in

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1 Section 1 on the page that's Bates stamped

2 MJR20235 --

3 A. Uh-huh.

4 Q. -- that provides for Oron to pay Liberty
5 Media \$600,000.

6 Do you see that?

7 A. I do.

8 Q. So that's \$50,000 more than Liberty was
9 getting under the settlement agreement that was
10 enforced by Judge Navarro, correct?

11 A. Yes. It was essentially he was settling
12 the \$131,000 attorney's fees motion for 50 grand.

13 Q. And then it says, The settlement funds
14 will be paid as follows: The parties will
15 stipulate that 675,000 US dollars of the frozen
16 funds in Oron's PayPal account will be transferred
17 immediately to the client trust account of Boston
18 Law Group, PC.

19 Do you see that?

20 A. Yes.

21 Q. And the client trust account of Boston
22 Law Group PC, that's Val Gurvits' trust account,
23 correct?

24 A. Correct.

25 Q. So \$675,000 is going into Mr. Gurvits'

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1 trust account, and \$600,000 of that is the
2 settlement payment to Liberty Media, correct?

3 A. Correct.

4 Q. And then in the last paragraph of
5 Number 1, it says, Upon the completion of the
6 disbursal term, Boston Law Group shall pay the
7 settlement funds to Liberty Media or its attorney
8 and pay Attorney Marc Randazza, Attorney Randazza,
9 the remainder of the escrowed funds in accordance
10 with the terms herein.

11 Do you see that?

12 A. That was Val's proposal.

13 Q. All right. And then on the next page,
14 MJR20236, in Section 2, says, Oron shall engage
15 Attorney Randazza in accordance with the terms of
16 the engagement agreement attached hereto as
17 Attachment B, effective as of -- it's got a blank
18 there.

19 A. I'm sorry. Can you tell me where you are
20 looking at specifically again?

21 Q. MJR20236.

22 A. Yes.

23 Q. The Paragraph Number 2.

24 A. Okay. Got it.

25 Q. Val's version of the settlement agreement

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1 that he sends to you.

2 A. Yes.

3 Q. It has this provision in there that says,
4 Oron is engaging you in accordance with the terms
5 of the engagement agreement that Val has as an
6 attachment to this, correct?

7 A. Yes.

8 Q. So Val's proposing that the retainer
9 agreement that you sent with the \$75,000 payment
10 be attached to this settlement agreement, right?

11 A. That appears to be Val's proposal.

12 Q. And then Val's also proposing that this
13 sentence be in here, Liberty hereby consents to
14 such engagement.

15 Do you see that?

16 A. Yes.

17 Q. And then in Paragraph 3, there's also a
18 provision that says, Upon the completion of the
19 disbursal terms, Boston Law Group shall pay
20 Randazza a bonus of 50,000 US dollars out of
21 escrowed funds.

22 Do you see that?

23 A. I do.

24 Q. You weren't anticipating at this point
25 that your retainer agreement was going to actually

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1 be referenced and attached as an exhibit to the
2 settlement agreement you were going to have to
3 give to Liberty Media; is that correct?

4 A. I wasn't anticipating that the engagement
5 would be attached?

6 Q. Right.

7 ARBITRATOR HABERFELD: Why don't you --
8 why don't you restate the question with a time
9 more specifically in the preface?

10 MS. KRINCEK: Sure.

11 ARBITRATOR HABERFELD: At what point?

12 BY MS. KRINCEK:

13 Q. So at this point when Val is forwarding
14 you the draft settlement agreement, which you
15 potentially have to show to Liberty Media to get
16 approved, correct?

17 A. Correct.

18 Q. He's got attached the engagement
19 agreement that provides for you to get \$75,000,
20 correct?

21 A. Actually, a lot more than that, from the
22 looks of it.

23 Q. Okay.

24 A. 75, and then there's 50 here, and then
25 there's another 50 in Paragraph 6. So it looks

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1 like I get 175,000 personally under this -- under
2 this proposal.

3 Q. Now, you were concerned that you were
4 going to have to show Liberty Media a draft
5 settlement agreement that said that you were
6 getting \$75,000; is that correct?

7 A. I wasn't concerned about that, and it was
8 a -- and from the looks at this, it was 175,000,
9 not just 75,000.

10 ARBITRATOR HABERFELD: Did you get an
11 answer to your question?

12 MS. KRINCEK: It's fine.

13 ARBITRATOR HABERFELD: Let's have it read
14 back, or you just want to let it go?

15 MS. KRINCEK: I can let it go.

16 ARBITRATOR HABERFELD: All right. Let's
17 go to the next question.

18 BY MS. KRINCEK:

19 Q. Can you turn to Exhibit 406?

20 A. Yes, I'm there.

21 Q. This is an e-mail exchange between you
22 and Mr. Gurvits on August 9th, soon after he has
23 forwarded to you the draft settlement agreement
24 that attaches your retaining agreement, correct?

25 A. Correct.

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1 Q. And you e-mail Mr. Gurvits, and you say,
2 After consulting with ethics counsel, I must
3 modify one part of our discussion. Please inform
4 Oron that my prior offer to represent them is
5 revoked. It is not that I would not consider it
6 in the future, but I think that even discussing it
7 at this point creates an ethical gray area that I
8 would rather not be in.

9 As you are aware, it is ethically
10 improper to enter agreements that restrict an
11 attorney's right to practice. I think that having
12 that issue even being contemplated at this point
13 is premature and can sour the whole deal,
14 potentially even making the entire agreement
15 unenforceable.

16 You say, I guess I will just have to
17 realize that if they do not get some of the
18 benefits that they had hoped to get, that I will
19 not get \$75,000. That is a hell of a lot of
20 money, so they can probably consider my possible
21 incentives and act accordingly. Given that I know
22 that I have a \$75,000 pot of gold at the end of
23 the rainbow, one could guess how I might be
24 incentivized to behave. However, I can make no
25 representations in that regard.

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1 That's what you wrote to Mr. Gurvits,
2 correct?

3 A. It is, yes.

4 Q. And you didn't need at this point to
5 consult with ethics counsel to figure out that
6 negotiating for a payment to conflict you out or
7 negotiating for a payment in connection with a
8 settlement agreement is unethical, right?

9 A. I did, because it seemed like we were
10 structuring it in a way that would be okay. But
11 it was my understanding after looking into it that
12 it shouldn't go forward that way.

13 Q. What was wrong with it? What was wrong
14 with the deal the way it was structured?

15 A. Well, first of all, the -- I think the
16 \$175,000 made it clear that it was so over the
17 top, that I think Val was overplaying his hand. I
18 didn't quite know what he was doing, but it
19 didn't -- it just didn't smell right to me, and I
20 didn't want to get near that fence.

21 Q. Was the fact that you were going to be
22 getting \$75,000 a problem?

23 A. No, because ultimately I didn't expect
24 any of that to happen. Again, this is a theme you
25 see with Val.

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1 Q. So Val responds to your e-mail, and he
2 say, Understood. I will take care of it in a way
3 that addresses your concerns, correct?

4 A. Correct.

5 Q. Can I have you turn to Exhibit 368?

6 ARBITRATOR HABERFELD: Are you at a
7 convenient breaking point, or do you want to keep
8 going?

9 MS. KRINCEK: No, that's fine. We can
10 break here.

11 ARBITRATOR HABERFELD: Are you sure?

12 MS. KRINCEK: Yeah.

13 ARBITRATOR HABERFELD: Let's take our
14 lunch recess, and see you back in an hour.

15 MR. WHITE: Okay. Thank you, Your Honor.

16 (Whereupon, a lunch recess was taken.)

17 ARBITRATOR HABERFELD: Back on the
18 record.

19 Ms. Krincek?

20 BY MS. KRINCEK:

21 Q. Mr. Randazza, before we broke for lunch,
22 we had left off, we had just looked at
23 Exhibit 406, which is an August 9th e-mail between
24 Val and yourself where after Mr. Gurvits sent you
25 a version of the settlement agreement that had

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1 your retainer agreement with Oron attached as an
2 exhibit, you responded to him about consulting
3 with ethics counsel --

4 A. Uh-huh.

5 Q. -- and he responded to you, Understood, I
6 will take care of it in a way that addresses your
7 concerns.

8 Can you please now turn to Exhibit 368?

9 A. Okay. I'm there.

10 Q. And I wanted to ask you about the top
11 e-mail on the first page of Exhibit 368, the Bates
12 stamp is EMC1568.

13 The e-mail exchange below that,
14 continuing on the next few pages, seem to be a
15 back and forth between yourself and Mr. Gurvits
16 about where the settlement money to Liberty is
17 going to be maintained, whether it's going to be
18 maintained by the court or in whose trust account,
19 yours or his.

20 Do you remember having that back and
21 forth with Mr. Gurvits?

22 A. What page is this do you want me looking
23 at again?

24 Q. Well, why don't you -- I'm going to ask
25 you about the top e-mail.

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1 A. Okay.

2 Q. But I just wanted to get your general
3 understanding about the rest of the e-mail string.

4 A. Okay.

5 Q. So if you want to read the rest of it,
6 and then I can reask my question.

7 A. Okay. So what's your question.

8 Q. So my question for you: Is the rest of
9 the e-mail string, you and Mr. Gurvits were going
10 back and forth to try and agree upon where the
11 settlement money for Liberty would be kept, in
12 whose trust account, or the court, or those type
13 of issues?

14 A. That's what it looks like.

15 Q. And then the top e-mail is an e-mail from
16 you to Mr. Gurvits on August 10th, 2012, Subject:
17 Re: Agreement Oron.

18 Do you see that?

19 A. Yes.

20 Q. And you say, Okay. Write up the stip.
21 I'm driving back from Phoenix. We move \$675,000,
22 correct?

23 A. Yes.

24 Q. And then you say, I think we can deal
25 with the other thing by saying the 75K is released

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1 to my trust for a settlement with me personally.

2 It's not a retainer for services, but rather a
3 settlement. That might work.

4 A. Yes.

5 Q. You wrote that to Mr. Gurvits, correct?

6 A. I did.

7 Q. You're proposing that to cover up the
8 fact that you are getting a \$75,000 retainer
9 payment from Oron by characterizing it as a
10 settlement, correct?

11 A. That's entirely incorrect.

12 Q. You testified yesterday on direct
13 examination regarding whether you had any personal
14 claims against Oron, that Oron had done some
15 pretty shady things against you personally.

16 A. Yes.

17 Q. Do you recall that testimony?

18 A. I do.

19 Q. Did you have any specific legal claims
20 against Oron to resolve?

21 A. Nothing I thought I would ever actually
22 win.

23 Q. Do you have any written communications
24 you can point us to where you asserted to Oron or
25 other counsel that you had any personal claims

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1 against them?

2 A. No.

3 Q. Turn to Exhibit 407, please.

4 A. Okay. I'm there.

5 Q. This is an e-mail from Mr. Gurvits to you
6 on August 12th, 2012, and he's attaching a
7 proposed settlement agreement in the Oron matter,
8 correct?

9 A. Correct.

10 Q. And he sent you this at 8:38 p.m.; is
11 that correct?

12 A. Yes.

13 Q. And Mr. Gurvits tells you in his e-mail
14 to you, As I indicated before, these terms shall
15 not become binding unless and until executed by
16 both parties and the signature pages exchanged by
17 no later than Monday, August 13th, correct?

18 A. Correct.

19 Q. If you will, in this same Exhibit 407,
20 flip forward to the page that's Bates stamped at
21 the bottom MJR20326.

22 A. Okay. I see it.

23 Q. And I wanted to focus your attention on
24 the bottom portion of that page, Number 1, Oron
25 shall pay Liberty \$600,000.

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1 Do you see that?

2 A. Yes.

3 Q. So that's consistent with the last
4 version of the settlement agreement that we looked
5 at where Liberty Media is getting \$600,000,
6 correct?

7 A. Yes.

8 Q. Now, the \$75,000 payment earmarked for
9 your -- for you or your firm in this version of
10 the settlement agreement, it provides that that
11 \$75,000 is going to be transferred immediately to
12 the client trust account of Boston Law Group.

13 Do you see that?

14 A. I do.

15 Q. And the Boston Law Group trust account is
16 Mr. Gurvits' trust account, correct?

17 A. Correct.

18 Q. Gone from this version of the agreement
19 is any reference to the \$75,000 being a payment
20 for you, correct?

21 A. Correct.

22 Q. And you still had not disclosed to
23 Liberty Media that your negotiations included you
24 potentially receiving a payment for \$75,000,
25 correct?

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1 A. Incorrect.

2 Q. Let me have you go to your deposition.

3 Page 162. I'm going to start at Line 14 on

4 Page 162 through 16 -- Page 163, Line 3.

5 Question: Okay. So I'm asking as far as

6 you are concerned, though, the \$75,000 that's

7 going into Val's account --

8 Answer: Yes.

9 Question: -- that's money that you will
10 potentially receive if the retainer agreement that
11 you previously sent is executed.

12 Answer: As I understood, that money
13 would -- first of all, I didn't -- I don't really
14 know at the point what Val was thinking. I know
15 that that was going to come in if this all got
16 executed, and then I would disclose it to Jason.

17 It would probably be part of the settlement
18 agreement funds, and then I would get my bonus
19 based on the amount -- the total amount that came
20 in.

21 A. Uh-huh.

22 Q. So you say in here that if it all got
23 executed, then you would disclose it to Jason,
24 correct?

25 A. Jason and I had already discussed it,

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1 though, because you might recall an e-mail before
2 where I was talking about if it was a -- if it was
3 payment for legal fees, I couldn't give it to
4 Liberty, but if it was payment for a settlement, I
5 could.

6 Q. What e-mail exchange are you referring
7 to?

8 A. I don't recall exactly which exhibit it
9 was, but you and I, I believe, went back and forth
10 on it earlier.

11 Q. It sounds like you might be referring to
12 the e-mail exchange that occurred on August 29th
13 of 2012 -- or, I'm sorry -- August 13th of 2012,
14 after you presented the settlement agreement to
15 Jason in his office?

16 A. That sounds right.

17 Q. And when this agreement was sent to you,
18 which is Exhibit 407, this is the day before
19 August 12th, 2012.

20 Do you see that?

21 A. Correct, yes.

22 Q. So that e-mail communication you had just
23 referenced had not occurred, correct?

24 A. Correct. Conversations had, but not an
25 e-mail exchange.

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1 Q. What conversations had occurred?

2 A. That if it were paid, that he -- that he
3 had offered to, quote, unquote, bribe me again,
4 and that if it were paid to me as fees, I couldn't
5 put it in the pot. Jason said, Well, I would
6 think that every dollar that comes in belongs to
7 the company. None of it belongs to you.

8 Which is why Val and I were discussing
9 let's just make it a settlement agreement with me,
10 that way if I get a settlement, that can be -- I
11 can do whatever I want with that. But I can't
12 share fees with a nonlawyer.

13 Ultimately the math on this worked out to
14 it would change my bonus by, you know, \$31,000, so
15 didn't ultimately matter.

16 Q. Mr. Randazza, the communication that you
17 are just talking about with Jason about if it's
18 fees, it can't be paid to you --

19 A. Yeah.

20 Q. -- that's the August 13th, 2012,
21 communication, correct?

22 A. That's the e-mail, but that's not the
23 conversation. I don't have a recording of the
24 conversation I had with Jason.

25 Q. So it's your testimony today that you had

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1 an earlier verbal undocumented conversation with
2 him prior to August 13th, and then you had a
3 repetitive documented communication with him on
4 August 13th?

5 A. It is my testimony that I talked to Jason
6 about all of these facts any time I got some time
7 with him. So I didn't record the exact date and
8 time of the conversation that I had with him three
9 years ago, but I had these conversations with him,
10 and I think that the e-mails show that.

11 Q. So you can't be certain whether -- when
12 that conversation occurred, if it was before or
13 after August 12th of 2013?

14 A. I cannot testify with mathematical
15 precision, but I can tell you it is my best
16 recollection that it did.

17 Q. And you have no documentation to support
18 that contention, correct?

19 A. Not that I have been able to dig up, no.

20 Q. Before we move on to our next exhibit,
21 within this settlement agreement, can you please
22 turn to the page that's Bates stamped MJR20328?

23 A. I am there.

24 Q. And I wanted to ask you about the
25 paragraphs that are Numbered 9 and 10 of that

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1 agreement. And Paragraph 9, there is still a
2 provision in there about dissuading others from
3 bringing suit against Oron. It says, Attorney
4 Randazza and Liberty will actively dissuade others
5 from bringing suit against Oron and the parties to
6 the Nevada and Hong Kong lawsuits, correct?

7 A. Yes, this was Val's proposal.

8 Q. And then Paragraph 10, Attorney Randazza
9 and Liberty will actively assist Oron in sending
10 letters written by Oron and doing everything else
11 necessary to convince PayPal and other payment
12 processors to allow Oron to accept payment through
13 their service and to send letters to every company
14 and entity to whom Liberty or Randazza sent
15 letters pertaining to this matter. No dishonest
16 statements will be required, correct?

17 A. Yes.

18 Q. Can you turn to Exhibit 369?

19 A. I'm there.

20 Q. Exhibit 369 is an e-mail that's your
21 response to the e-mail attaching the settlement
22 agreement from Mr. Gurvits that we just looked at,
23 correct?

24 A. Yep.

25 Q. And this happens on August 12th, 2012,

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1 correct?

2 A. Yep.

3 Q. In the last line of your e-mail to
4 Mr. Gurvits is, Caveat to 9 and 10: I'll do it if
5 Oron pays me. 75K ought to do it, correct?

6 A. Yep.

7 Q. Do you recall that on August 13th, 2012,
8 you presented Jason with the new version of the
9 Oron settlement agreement to review?

10 A. I don't have any recollection of exactly
11 what happened on August 12th, 2013.

12 Q. August --

13 A. -- 13th, 2012.

14 Q. I'm going to read from your deposition
15 transcript, Page 174.

16 A. Yep. Okay.

17 Q. Line 24. Question: Exhibit 32, Marc, do
18 you recall that this is the settlement agreement
19 with Oron that you presented to Jason to review on
20 August 13th, 2012?

21 Answer: Yes.

22 Do you see that?

23 A. Yes.

24 Q. So you did present the settlement
25 agreement to Jason to review on August 13th,

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1 correct?

2 A. That was my recollection at the time,
3 yes.

4 Q. Can you turn to Exhibit 325?

5 A. Okay. I'm there.

6 Q. Exhibit 325 is the settlement agreement
7 that you presented to Jason on August 13th, absent
8 the handwritten notations, correct?

9 A. Yes.

10 Q. Jason reviewed the agreement and asked
11 you who was getting the \$75,000, correct?

12 A. That's what he wrote on this after the
13 fact.

14 Q. Do you recall him reviewing the agreement
15 and then asking you who was getting the \$75,000?

16 A. Yes. I thought that was strange.

17 Q. And you explained to him that it was a
18 bribe to your law firm, correct?

19 A. I said -- I think I said it was that
20 represented the bribe that we had talked about
21 before.

22 Q. Your testimony today is that you have
23 specific recollection of saying to Mr. Gibson that
24 day that that is the bribe, and not a bribe to
25 you?

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1 A. Jason and I had discussed the fact
2 that --

3 Q. Can I get an answer to my question?

4 A. I'm sorry. I can't answer if you are
5 going to interrupt me during my answer.

6 Q. Well, your answer was not --

7 ARBITRATOR HABERFELD: At this point
8 let's not have argument on this particular point
9 at this particular time.

10 I would ask you, Mr. Randazza, to please
11 remember the conversation about your job as a
12 witness on cross.

13 THE WITNESS: Sure.

14 ARBITRATOR HABERFELD: I'm only reminding
15 you of it now because I think it's appropriate for
16 me to do so now.

17 I want you to listen to the question.

18 What was the last question?

19 (Whereupon, the pertinent part of the record
20 was read back by the court reporter.)

21 ARBITRATOR HABERFELD: That's the
22 question. Did you hear it?

23 THE WITNESS: Yes.

24 ARBITRATOR HABERFELD: What's your best
25 answer?

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1 THE WITNESS: Repeat it again.

2 (Whereupon, the pertinent part of the record
3 was read back by the court reporter.)

4 THE WITNESS: I don't have a specific
5 recollection of the exact quotations being used
6 that day. I do have a recollection of the
7 conversation, and --

8 BY MS. KRINCEK:

9 Q. And you explain --

10 A. -- the facts that we exchanged.

11 Q. And you explained to Mr. Gibson in
12 response to this inquiry about who the \$75,000 was
13 going to, that it was a bribe to your law firm,
14 correct?

15 A. The way I can honestly answer this
16 question is that this was not the first time Jason
17 and I had discussed this \$75,000.

18 Q. Are you saying that you and Jason
19 specifically had previously discussed a payment of
20 \$75,000?

21 A. No. I'm specific -- I'm saying that
22 Jason and I had specifically discussed that Val's
23 at it again with his pay me not to represent
24 anybody against his client again.

25 Q. That's the prior conversation that you

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1 had with Jason on this topic?

2 A. More than one, yes.

3 Q. Do you recall during this meeting where
4 you presented Jason with the settlement agreement
5 that Jason verbalized to you that he thought all
6 the money should be going to the company?

7 A. My recollection is I gave him the
8 document, he said he would talk to me about it
9 later, and then he came into my office, and we
10 talked about it then.

11 Q. Well, do you recall when he was in your
12 office that he told you that he thought all the
13 money should be going to the company?

14 A. I do.

15 Q. Do you recall at that time telling Jason
16 that you couldn't give him any part of the 75,000
17 if it was attorney's fees because that would be
18 unethical?

19 A. If it was attorney's fees, yes.

20 Q. You told Jason at that time you were
21 intending on using the money to pay the RLG,
22 Randazza Legal Group guys, correct?

23 A. I don't think that's accurate.

24 Q. Are you denying that you told him that?

25 A. Yes. I don't think that that's accurate.

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1 Q. You told Mr. Gibson that the \$75,000 was
2 to take care of the Randazza Legal Group people;
3 you don't recall saying that to Mr. --

4 A. I recall asking him to pay them a bonus
5 for all the hard work that they had done on the
6 case because they were being -- they had worked
7 all through into the night, but I don't think I
8 made any specific representations about it being
9 earmarked for that.

10 Q. You could tell Jason was upset about the
11 \$75,000 payment, correct?

12 A. I didn't think that's what he was really
13 upset about, because his -- it was strange that he
14 was acting surprised about something that we had
15 talked about quite a bit.

16 Q. Well, you just testified that you hadn't
17 specifically talked about a \$75,000 payment,
18 right?

19 A. The specific number, I do not recall
20 talking about the specific number. I recall
21 discussing that Val was up to his old tricks
22 again.

23 Q. And is it your contention that from that,
24 the company is supposed to glean that you've
25 negotiated and reached a deal to be retained by

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1 Oron for a \$75,000 payment?

2 A. I had not reached such a deal, so, no.

3 Q. Isn't it true that you could tell Jason
4 was upset about the \$75,000 because he made a face
5 after he found out about it?

6 A. Again, I don't believe, and I didn't
7 believe at the time that he was upset about that,
8 because it was -- it was old news to him at that
9 point. I felt that it was pretextual, and he was
10 upset about something else. What, I did not know.

11 Q. Isn't it true because you knew that you
12 had been caught, and Jason was upset about the
13 fact you had negotiated a \$75,000 bribe to
14 yourself, that at that point you told Jason you
15 would give it to the company?

16 A. No, that is inaccurate.

17 Q. Can you please turn to Exhibit 324?

18 A. Okay. I am there.

19 Q. I want to ask you, Marc, first about the
20 portion of the e-mail that's from Mr. Gibson to
21 you on August 13th, 2012. It starts on the bottom
22 of the first page of Exhibit 324, and it's Bates
23 stamped EMC157.

24 Do you see where I'm at?

25 A. Uh-huh. Yes, I see it.

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1 Q. And Jason wrote to you, I'm going to be
2 frank that my stomach is churning after reading
3 the proposed agreement.

4 Do you see that?

5 A. I do.

6 Q. If you turn to the second page of that
7 exhibit, EMC158.

8 A. Yes.

9 Q. The second paragraph Jason wrote to you,
10 I'm not comfortable with how seemingly little we
11 are getting back for our investment compared to
12 what we would getting back spending our money on
13 any of those things -- other things listed above.
14 We are paying for virtually everything and taking
15 all of the risk and when it is all said and done,
16 all of these parties are standing there waiting to
17 diminish the company's share of the pie.

18 We feel pretty strongly that every dollar
19 that comes from a defendant should be ultimately
20 earmarked for the company since on top of any
21 bonus, it is responsible for paying for office and
22 equipment expenses, Bar fees, continuing education
23 expenses, travel expenses, court filings, Erika's
24 salary and benefits, investigation costs, your
25 salary and benefits.

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1 The whole "bribery" deal sits funny with
2 us as it is written, especially when there is no
3 guarantee we will even get the extra 75K from
4 their attorney's trust fund.

5 Do you see that?

6 A. I do.

7 Q. And do you still deny that you initially
8 told Mr. Randazza (sic) that the money was for you
9 and your firm, and then after he was upset said
10 you would give it to the company?

11 ARBITRATOR HABERFELD: Please listen to
12 the question. I may have misheard it.

13 Listen to the question.

14 (Whereupon, the pertinent part of the record
15 was read back by the court reporter.)

16 ARBITRATOR HABERFELD: Did you catch it,
17 Ms. Krincek?

18 MS. KRINCEK: Catch what?

19 (Whereupon, the pertinent part of the record
20 was read back by the court reporter.)

21 MS. KRINCEK: Let me restate that.

22 BY MS. KRINCEK:

23 Q. Do you still deny that you initially told
24 Mr. Gibson that the \$75,000 was for you and your
25 firm, and after he was upset, then said you would

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1 give it to the company?

2 A. No. I always told him that that was
3 Val's proposal, so, no.

4 Q. In your response to Mr. Gibson, you told
5 Mr. Gibson that your associate Jay DeVoy and
6 partner Ron Green had not been paid for any of
7 their work on Oron, correct?

8 A. I'm sorry. Which exhibit?

9 Q. Same exhibit, your response to
10 Mr. Gibson's e-mail.

11 A. Okay. And, I'm sorry. What was your
12 question again?

13 Q. Yeah. You conveyed to Mr. Gibson that
14 Jay DeVoy and Ron Green, the RLG people, hadn't
15 been paid for their work on Oron yet, correct?

16 A. I know Ron didn't. I don't think I was
17 intending to convey that Jay hadn't been paid.

18 Q. Because he testified at his deposition
19 that he had been paid, correct?

20 A. I don't know what he said at his
21 deposition, but I would confirm that Jay was on
22 salary, so Jay got paid. Ron got paid only on
23 what was collected.

24 Q. Ron, who you refer to and is identified
25 by your law firm as a partner, at this point was

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1 really a 1099 independent contractor, correct?

2 A. That is how he collected his pay, but he
3 was -- I considered him to be my partner.

4 Q. He had no equity interest in Randazza
5 Legal Group, correct?

6 A. He did not own any equity in it, no.

7 Q. And he only recently became an employee
8 of the firm, correct?

9 A. We changed his -- we changed his
10 contract, yes, to make him a W-2 salaried employee
11 with a bonus structure rather than the way we had
12 it before.

13 Q. When you got -- when you got Jason's --
14 this e-mail that we just looked at from Jason to
15 you on August 13th, after reading this e-mail, you
16 knew that Jason was upset about the \$75,000
17 payment, correct?

18 A. As I've testified before, I thought that
19 this was all a pretext for something else.

20 Q. Can you turn to Page 181 of your
21 deposition?

22 A. Okay.

23 Q. Page 181, Line 1. Question: Still on
24 Page 2, Marc, about a little less than halfway
25 down, Jason wrote, The whole "bribery" deal sits

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1 funny with us as it is written, especially when
2 there is no guarantee we will even get the extra
3 \$75,000 from their attorney's trust fund.

4 A. Yes.

5 Q. Answer: Yes, I see that.

6 Question: Do you see that?

7 Answer: I do.

8 Question: You understood after reading
9 this e-mail that Jason was upset about the \$75,000
10 payment, correct?

11 Answer: Yes.

12 And this e-mail exchange, again, is on
13 August 13th, 2012, correct?

14 A. Yes.

15 Q. Can you turn to Exhibit 370, please?

16 A. Okay. I see it.

17 Q. This is an e-mail exchange, the bottom
18 portion and the top portion is from August 14th,
19 2012.

20 Do you see that?

21 A. I do.

22 Q. Bottom portion, you e-mail Mr. Gurvits on
23 August 14th at 11:43 a.m., and you say, I have a
24 new ethical problem. Trying to resolve it.

25 Do you see that?